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ABSTRACT

In February 1991 the U.S. Commission on Civil Rights began a long-term study of the factors contributing to increased racial and ethnic tensions in the United States. This document is a report on one aspect of this study, a hearing held to consider the factors underlying increased racial and ethnic tension in Chicago (Illinois). This hearing was the third in a series convened as part of the larger project. The report focuses on three major sources of racial and ethnic tensions in Chicago, each of which is the subject of a section of this report: (1) issues in economic development; (2) minority access to public services; and (3) police-community relations in Chicago. In general, the U.S. Commission on Civil Rights concludes, as a result of this hearing, that distinct differences exist in racial and ethnic groups in both economic activities and access to public services. In Chicago as in other urban areas, minority populations and businesses continue to face obstacles to obtaining financial credit and technical assistance, decent housing, language-appropriate social services, and culturally sensitive services. Improvements are also needed in procedures and systems for citizen complaints of police misconduct. Recommendations are made to reduce racial and ethnic tensions in Chicago. These recommendations have national implications. Three dissenting statements representing the views of four commissioners are also presented. (Contains five tables.) (SLD)

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ED 407 451

Racial and Ethnic Tensions in American Communities: Poverty, Inequality, and Discrimination

Volume III: The Chicago Report

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September 1995

A Report of the United States Commission on Civil Rights

U.S. Commission on Civil Rights

The U.S. Commission on Civil Rights is an independent, bipartisan agency first established by Congress in 1957 and reestablished in 1983. It is directed to:

- Investigate complaints alleging that citizens are being deprived of their right to vote by reason of their race, color, religion, sex, age, disability, or national origin, or by reason of fraudulent practices;
- Study and collect information relating to discrimination or a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, age, disability, or national origin, or in the administration of justice;
- Appraise Federal laws and policies with respect to discrimination or denial of equal protection of the laws because of race, color, religion, sex, age, disability, or national origin, or in the administration of justice;
- Serve as a national clearinghouse for information in respect to discrimination or denial of equal protection of the laws because of race, color, religion, sex, age, disability, or national origin;
- Submit reports, findings, and recommendations to the President and Congress;
- Issue public service announcements to discourage discrimination or denial of equal protection of the laws.

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Racial and Ethnic Tensions in American Communities: Poverty, Inequality, and Discrimination

Volume III: The Chicago Report

September 1995

A Report of the United States Commission on Civil Rights

Letter of Transmittal

The President
The President of the Senate
The Speaker of the House of Representatives

Sirs:

The United States Commission on Civil Rights transmits this report to you pursuant to Public Law 98–183, as amended. It is the product of a 3-day factfinding hearing, sworn testimonies of numerous witnesses, subpoenaed data, as well as months of field investigation and research.

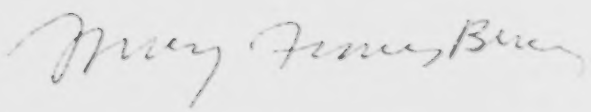
The Chicago Report is the third volume of a series of Commission reports on *Racial and Ethnic Tensions in American Communities: Poverty, Inequality, and Discrimination*. In preparation for this project, the Commission recognized that we are at a crossroads. The perspective and response of the Nation towards an increasingly diverse population, existing racial and ethnic tensions, and the frustration of unmet needs in our cities, will determine the future well-being and progress of not only urban communities, but of the country as a whole.

The report focuses on three major sources of racial and ethnic tensions in Chicago: unequal economic opportunity, unequal access to public services, and poor police-community relations. In general, the Commission concludes that distinct differences exist among racial and ethnic groups in both economic opportunity and access to public services. Although our recommendations are primarily directed to the city of Chicago and the State of Illinois, several civil rights issues require Federal attention.

Specifically, as in other urban areas, Chicago's minority populations and businesses continue to face impediments to obtaining access to financial credit and technical assistance; city residents live in segregated and deteriorated public housing; poor and minority communities lack access to primary health care services; city health and social services agencies have a shortage of trained bilingual staff, which prevents many Spanish-speaking residents from obtaining needed services; the city's public school system is not adequately educating its minority and limited-English proficient student populations; improvements are needed in procedures and departmental systems for citizen complaints of police misconduct; and minorities and women remain underrepresented in the city's police force. In addition, Chicago's Latino population is noticeably underrepresented in the work force of Chicago's city government.

As a result, we urge the executive and legislative branches of government to act creatively and with dispatch to implement the recommendations in this report, and to move forward with a program for meeting the dire needs of all of America's communities. The Commission believes that this report will be useful in the formulation of that strategy.

Respectfully,
For the Commissioners,



Mary Frances Berry, *Chairperson*

Preface

This report is based on sworn testimony and subpoenaed documents received by the U.S. Commission on Civil Rights in a 3 day hearing in Chicago, Illinois, on June 24-26, 1992, as well as legal research and analysis. The Chicago hearing was the third in a series of hearings convened by the Commission as part of its nationwide project, *Racial and Ethnic Tensions in American Communities: Poverty, Inequality, and Discrimination*, examining the factors underlying increased racial and ethnic tensions in the United States and developing policies to alleviate such tensions. Earlier hearings were held in the Mount Pleasant neighborhood of Washington, D.C. (January 1992) and in Washington, D.C. (May 1992). Subsequent hearings were held in Los Angeles, California (June 1993), and New York, N.Y. (September 1994). Future hearings are projected for Miami, Florida, and the Mississippi Delta. *The Mount Pleasant Report* was the first volume of the series of Commission reports on racial and ethnic tensions that investigated the underlying causes of a May 1991 civil disturbance in the D.C. neighborhoods of Mount Pleasant and Adams Morgan—home to both its most heterogeneous population and its largest concentration of Latinos. The Commission report's findings and recommendations were directed to the District of Columbia government, as well as the Federal Government, and are relevant to other localities across the Nation confronted with the same civil rights issues.

The Chicago hearing had a two-fold purpose. First, the hearing was held to examine issues related to racial and ethnic tensions in Chicago. Along these lines, witnesses at the Chicago Hearing addressed three major sources of racial and ethnic tensions in that city, each of which is covered by a part of this report: unequal economic opportunity; unequal access to public services; and police misconduct. Second, the hearing was held to expand on the Mount Pleasant hearing's examination of access to publicly provided services by a large and growing limited-English-speaking population, predominantly Spanish-speaking.

Based on the testimony of witnesses, analysis of subpoenaed documents, and legal research, the Commission makes a number of preliminary findings and recommendations which it directs to the attention of the President, Congress, and the American people. The report and witness testimony and subpoenaed documents will also be used in the preparation of a comprehensive report on racial and ethnic tensions in American communities to be prepared after the Commission has completed its entire series of hearings.

Acknowledgments

The hearing was organized by attorney advisors Patricia Orloff Grow,* Susan Muskett,* and Stella Youngblood and social scientist Nadja Zalokar under the general supervision of General Counsel Carol McCabe Booker.*

The report was written by social scientists Eileen Rudert and Nadja Zalokar, and attorney advisors Patricia Orloff Grow and Bernard Murillo,* with supervision by Assistant General Counsel Jeffrey P. O'Connell. Editorial review was provided by Constance Davis, Wanda Johnson, and Charles Rivera. Editorial assistance and preparation of the report for publication was provided by Gloria Hong Izumi. The report was prepared under the overall supervision of Deputy General Counsel Stephanie Y. Moore and Acting General Counsels Lawrence B. Glick,* Rosalind D. Gray,* and Emma Monroig.

* No longer with the Commission.

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Part I. Issues in Economic Development

Chicago is a great American city. It has motherhood. It has tasty apple pie. It has foreign-made cars and, yes, it excels in racism, a stifling, strangling racism that has caused frustration for millions of Chicago residents. A racism that has caused a lack of self-worth in thousands, yet, a racism that has been tremendously beneficial to thousands of others. A racism kept alive and well by procedures, practices, and policies of our national administration for certainly over a decade. Yes, a racism that has brought racial and ethnic tensions to a feverish, dangerous, and explosive point in the great city of Chicago.[1]

These words were spoken at a hearing held by this Commission in Chicago, Illinois, on June 24–26, 1992. They echo compellingly what the Commission has learned from witnesses across the country at hearings on racial and ethnic tensions in American communities. At the Chicago hearing, witnesses testified about the interrelated effects of racism and unequal opportunity on racial and ethnic tensions.

Distinguishing racism and poverty, Chicago Human Relations Commission Chair Clarence Wood warned:

> For too long, we have attempted to solve the problems of racism by implementing programs that were developed to solve the problems of poverty. . . . Race and poverty are not interchangeable. . . . Before we can create and implement effective programs and policies, we must understand the critical chasm between racism and poverty.[2]

Other witnesses agreed that eliminating inequality of economic opportunity would not necessarily end racism or improve racial tensions, but they maintained that it was essential to avoid "that physical, violent conflict [that] emerges when people feel that they have been systematically disenfranchised in a political sense and an economic sense:"[3]

> We're not trying to promise that if you solve the economic problem that you would solve racism. . . . [R]acism is inherent in this country . . . and it appears to be here to stay. We've been fighting the same fight for more than 300 years. The question is, within the context of this institutionalized racism, can we, in this capitalistic [economy] make any upward mobility without revolts? The only reason that money is now going to the cities is because of Los Angeles. . . . Because of [the revolt] in Los Angeles, . . . money will flow into the neighborhoods where it should have been going in the first place.[4]

> The promise [of] greater participation within the economic infrastructure of the United States, or even this State, will [not], in and of itself, solve racism that's institutionalized, or even improve the relationship among minority groups. What I do think is that if we do not increase the participation, you will simply have greater eruptions of those communities, either independently, or fighting among themselves. . . . [There is] a kind of tinderbox sitting within this city in two or three pockets around town. And it's not going to take a lot for it to go.[5]

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1 Syd Finley, Executive Director, National Association for the Advancement of Colored People, Chicago, IL, testimony, *Racial and Ethnic Tensions in American Communities: Poverty, Inequality, and Discrimination, Hearing Before the U.S. Commission on Civil Rights*, Chicago, Illinois, June 24–26, 1992, vol. 1, p. 158 (hereafter *Chicago Hearing*).

2 Clarence Wood, Chair, Chicago Commission on Human Relations, testimony, *Chicago Hearing*, vol. 1, pp. 155–56.

3 James Lewis, Director of Research and Planning, Chicago Urban League, testimony, *Chicago Hearing*, vol. 3, p. 165.

4 Janette Wilson, National Executive Director, Operation Push, testimony, *Chicago Hearing*, vol. 3, pp. 166–67.

5 Robert Ruiz, Past President and Founding Member, Illinois Association of Hispanic Employees, testimony, *Chicago Hearing*, vol. 3, pp. 167–68.

Nevertheless, many witnesses stressed that inequality in economic opportunity across racial and ethnic lines is a fundamental cause of racial and ethnic tensions in America today. In the words of James Compton, president of the Chicago Urban League:

> [W]e are headed more in the direction of disunion than union in Chicago, as rich and poor continue to be defined largely along racial lines and remain rigidly separate from one another residentially. These trends portend disaster for race relations in Chicago. When inequality becomes systematically identifiable along racial lines within a city, and membership in that underclass is persistently passed from one generation to the next, then deep fissures are created. In their worst manifestations they lead to violence or nurture self-destructive behavior that in turn leads to persistence of inequality because individuals can no longer utilize the equality of opportunity to which they are entitled.[6]

Dr. James Lewis, director of research and planning for the Chicago Urban League, added:

> The first major step in solving America's race relations problems will not have been taken until economic disparities between racial groups have been largely eradicated. Economic viability is the key that unlocks the door to adequate housing, to access to America's best schools and universities, and to the material comforts that appear to so much define Americans to the rest of the world. If we were to put enough police in the streets or build enough inner-city athletic facilities, perhaps we could create the appearance of racial reconciliation. This was, of course, the mythology of the Old South. We should have learned that unless fundamental economic freedom and equality are actually achieved, outward calm will only mask the deeper pain and conflict, merely waiting for opportunities to be expressed.[7]

Over the past several decades the United States has witnessed a progressive closing of the doors of economic opportunity to many Americans. The maxim, "the rich get richer and the poor get poorer," has been borne out in the United States' experience of the 1980s.[8] Because minorities and inner-city residents are overrepresented among the poor, the burden of these changes has fallen disproportionately upon them.

The city of Chicago is a compelling example of the national trend. Its long history of racial and ethnic segregation has aggravated the effects of more recent trends of industrial restructuring and a national pattern of growing income inequality, producing a well-defined racial and ethnic pattern of unequal economic opportunity in that city.[9] Witnesses at the Commission's hearing attributed increasing racial and ethnic tensions in Chicago, at least in part, to a failure of government at all levels to develop and enforce aggressive policies to break down discriminatory and other barriers to economic opportunity.

Witnesses at the Chicago hearing stressed the fundamental importance of economic opportunity as a necessary foundation of true civil rights for all Americans. In introductory remarks before this Commission, Richard M. Daley, Mayor of the city of Chicago, observed:

> The bottom line is that civil rights must be accompanied by economic growth and opportunity, or we will never overcome the tensions and problems that plague our communities. While all Americans enjoy the same

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6 James Compton, President, Chicago Urban League, written statement submitted at *Chicago Hearing*, pp. 4–5.

7 Lewis Testimony, *Chicago Hearing*, vol. 3, pp. 127–28.

8 Income inequality across families, after reaching a low in the mid-to-late 1960s, has increased ever since, with sharp increases during the decade of the 1980s. Families in the bottom one-fifth of the income distribution have experienced real income declines, whereas those in the top one-fifth have experienced rises. Thus, not only has the gap between rich and poor grown wider, but the rich have gotten richer, and the poor have gotten poorer. See for instance, Lynn A. Karoly, "The Trend in Inequality Among Families, Individuals, and Workers in the United States: A Twenty-Five Year Perspective," pp. 19–97 in Sheldon Danziger and Peter Gottshalk, eds., *Uneven Tides: Rising Inequality in America* (New York: Russell Sage, 1993) and Frank Levy and Richard J. Murnane, "U.S. Earnings Levels and Earnings Inequality: A Review of Recent Trends and Proposed Explanations," *Journal of Economic Literature*, vol. 30, no. 3 (September 1985), pp. 1333–81.

9 See chapter 1 below for a discussion of segregation and socioeconomic trends in Chicago.

rights under the law, all Americans do not enjoy the same opportunities. If you are poor, if your mother received substandard health care, or used drugs during pregnancy, or if you're consigned to poor schools, or you lack the family and community structure you need, you are equal under the law, but you're still not equal.[10]

James Compton argued:

For many trapped in the poverty of inner cities, such as Chicago, the equality of opportunity promised by law holds little meaning in the seeming absence of tangible chances for self-improvement. In part, it is this gap between the promise and the reality, which has weakened our social fiber, creates despair and hopelessness, and leads to the loss of respect for law. . . .

There cannot be true civil rights or the promise of our Constitution for justice, tranquility, and the general welfare, and blessings of liberty fulfilled, until the protections of law actually yield livable wages, adequate housing, and quality education.[11]

University of Chicago Professor Marta Tienda and Haifa University Professor Haya Stier similarly observed:

The [American] dream is colorblind. Having a good job, a steady job, and a house. . . . Unfortunately, this dream is ever more remote for people of color confronting limited opportunity, whether produced by cyclical change, structural change, or plain old discrimination American style.[12]

Describing Chicago at the Commission hearing, Kale Williams, executive director of the Leadership Council for Metropolitan Open Communities, testified about "several cities in easy, tenuous coexistence with each other."

One city, predominantly white and non-Hispanic, has a history of active, sometimes violent resistance to residence by African Americans in their precincts. . . . Such communities are small in number, but their acts are deeply wounding of their immediate victims, and are magnified in their chilling effect on the aspirations of other minority families to be able to live where they choose.

Another city, where minorities and what we will soon be unable to call majorities live together in relative peace and good will, exists in a few city neighborhoods and in a dozen suburbs. Here public officials and community leaders have created a welcoming atmosphere and trumpeted the values of an integrated society. . . . The numbers of these integrated communities, too, are small, and their quiet successes often drowned out by the media's attention to more dramatic events, but they offer hope for the future.

A third city, often called the inner city, though it has outposts in the suburbs, is mostly black and poor. What Dr. King and others called slums in the 1960s have expanded in territory and intensified in misery. These intense concentrations of poverty and racial segregation are characterized by under-achieving schools, by high rates of unemployment, by sub-standard and deteriorating housing, much of it built and managed by the government, and by high rates of almost every negative indicator of health and by violence, most of it directed against other residents. . . .

And the fourth city is the one most people live in. . . . Most of its residents are white, most are working, many are affluent. Most, when polls are taken, identify themselves as unprejudiced: substantial majorities say they would welcome minority neighbors. In reality, few minorities, and very few African Americans find their way through the multiple barriers of a discriminatory housing market to find homes in this city. And this city, which has most of the jobs, has almost no housing that workers paid at the lower levels can afford. Since many minority workers fall into that lower paid category, at least at the beginning, this lack of affordable housing in the suburbs creates an economic as well as racial barrier, reinforcing the economic segregation in the inner city.[13]

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10 The Hon. Richard M. Daley, Mayor of the City of Chicago, opening remarks, *Chicago Hearing*, vol. 1, pp. 20–21.

11 Compton Testimony, *Chicago Hearing*, vol. 1, pp. 92–93.

12 Marta Tienda and Haya Stier, "Makin' a Livin': Color and Opportunity in the Inner City," paper presented at the Chicago Urban Poverty and Family Life Conference, October 1991, p. 34.

13 Kale Williams, Executive Director, Leadership Council for Metropolitan Open Communities, written statement submitted at

Mr. Williams' description is one of a highly segregated city. Chicago has a long history of residential segregation and continues to be one of the Nation's most segregated cities. Among the Nation's largest metropolitan areas, Chicago ranked sixth in overall level of segregation for blacks and third for Hispanics in 1990.[14] As in most other American cities, racial segregation in Chicago declined only imperceptibly between 1970 and 1990.[15]

Dr. Lewis, of the Chicago Urban League, explained:

> The problem is when the economic disparity is systematically identifiable along the lines of race, and also along the lines of residential separation. And what we have in Chicago is extraordinary, almost total separation of blacks and whites, and extremely high levels of separation of Hispanics and whites. We also have extraordinary economic segregation coinciding almost perfectly with that.[16]

Mr. Williams argued that "a very large part of the tensions between and among ethnic groups in Chicago and America flow from the rigid patterns of racial segregation in housing that we have inherited from the past."[17] Further, he notes that "it is no accident that [the inner city was] defined by race and ethnicity before [it was] defined by poverty. [It] is the bitter legacy of decades of deliberate segregation carried out by private marketers and government housing programs."[18]

The effects of racial and ethnic segregation on the economic and other opportunities of those living in Chicago's predominantly minority inner-city neighborhoods have been disastrous. As noted by Douglas Massey and Nancy Denton in their book, *American Apartheid*:

> Residential segregation is not some neutral fact; it systematically undermines the social and economic well-being of blacks in the United States. Because of racial segregation, a significant share of black America is condemned to experience a social environment where poverty and joblessness are the norm, where a majority of children are born out of wedlock, where most families are on welfare, where educational failure prevails, and where social and physical deterioration abound. Through prolonged exposure to such an environment, black chances for social and economic success are drastically reduced.[19]

In a statement to the Commission, Professor Denton further explained:

> With the neighborhood come bundled other amenities, and it is these amenities that form the basis for why neighborhoods and communities are at the heart of social problems. With neighborhoods come the privilege to attend good or bad local schools, exposure to various levels of crime, access (or lack thereof) to health care service, varying levels of fire and police protection, desirable or undesirable peer groups for children, an abundance or dearth of adult role models, and opportunities to interact with others who may or may not support one's beliefs and ideals.[20]

Chicago Hearing, pp. 1–2.

14 Roderick J. Harrison and Daniel H. Weinberg, "Racial and Ethnic Residential Segregation in 1990," paper presented at the Population Association of America meetings, Denver, Colorado, May 1992, pp. 55, 59.

15 Douglas S. Massey and Nancy A. Denton, *American Apartheid: Segregation and the Making of the Underclass* (Cambridge, MA: Harvard University Press, 1993), table 8.1 (hereafter *American Apartheid*).

16 Lewis Testimony, *Chicago Hearing*, vol. 3, pp. 164–65.

17 Williams, written statement submitted at *Chicago Hearing*, p. 2.

18 Ibid., p. 3.

19 Massey and Denton, *American Apartheid*, p. 2.

20 Nancy A. Denton, Assistant Professor of Sociology, State University of New York at Albany, written statement submitted at *Racial and Ethnic Tensions in American Communities: Poverty, Inequality, and Discrimination—A National Perspective, Hearing Before the U.S. Commission on Civil Rights*, Washington, D.C., May 21–22, 1992 (hereafter *Washington, D.C. Hearing*).

As just one example of the negative consequences of segregation for minorities in Chicago, a recent Chicago Urban League report shows that racial segregation is a critical factor limiting Chicago's minorities' access to jobs. Projecting future employment growth for Chicago neighborhoods, the report finds that neighborhoods where growth is projected to occur are neighborhoods—largely in the suburbs—where blacks generally do not live. The inner-city neighborhoods and other neighborhoods where Chicago's black population is concentrated are projected to lose jobs in the future. The report concludes, "[t]he relationship between race and the geography of opportunity is such that African Americans throughout the [Chicago] metropolitan area reside in areas plagued by disinvestment and the deterioration of local employment and business opportunities."[21]

The problems caused by racial segregation can be more insidious than just the absence of job opportunities. University of Chicago sociologist William Julius Wilson has expressed the view that today's inner-city residents experience a profound social isolation—"a lack of contact or of sustained interaction with individuals and institutions that represent mainstream society"[22]—that constitutes a formidable barrier limiting their access to ways out of joblessness and poverty. Subsequent researchers have uncovered empirical evidence supporting his thesis and linking social isolation, at least to a degree, to residential segregation. For instance, one researcher conducted ethnographic interviews with African American residents of high-poverty neighborhoods. She found that inner-city residents feel geographically confined, seldom daring to venture out of their immediate neighborhoods. One of the respondents in her study commented on the effects of spatial and social isolation:

> Well, basically, I feel that if you are raised in a neighborhood and all you see is negative things then you are going to be negative because you don't see anything positive. That's why most in the black community and the minority community, that is Hispanic and black, they do not see anything but their own community. They do not have time or they do not get out of their community. . . . If you're around people who constantly do drugs and you're constantly around them, then you're going to wind up trying them. You know going to the neighborhood school is fine, but many of them get out of high school and they're going to get a job in the neighborhoods, they don't really think about: "The United States is really big," even "Chicago is really big." There are a lot of things you can do in Chicago if you just know about them. But the thing is most black people don't know about them. . . . If you take a white child out of a rich neighborhood and put him in a poor neighborhood and around people that are negative, no matter what color he will be negative.[23]

Segregation, discrimination, and unequal educational opportunities all combine to limit the economic opportunities of Chicago's minorities. A decades-long national trend identified by scholars as "industrial restructuring"—the decline of United States manufacturing industries and the concomitant rise of the service sector—has aggravated the effects of segregation, discrimination, and unequal educational opportunity. Industrial restructuring has brought about a large-scale loss of relatively high-paying factory jobs that traditionally were open to persons with less than a college education. The factory jobs have been replaced by service sector jobs, which are either low paying or require a high degree of education. Furthermore, whereas many of the manufacturing jobs lost were located in central-city areas in close proximity to minority neighborhoods, the new service sector jobs—particularly those open to less educated workers—sprang up primarily in the suburbs. As a result, inner-city residents with low

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21 Nikolas C. Theodore and D. Garth Taylor, *The Geography of Opportunity: The Status of African Americans in the Chicago Area Economy*, Chicago Urban League, March 1991, p. i.

22 William Julius Wilson, *The Truly Disadvantaged: The Inner City, the Underclass, and Public Policy* (Chicago: The University of Chicago Press, 1987), p. 60 (hereafter *The Truly Disadvantaged*).

23 Sophie Pedder, "Social Isolation and the Labour Market: Black Americans in Chicago," paper prepared for presentation at the Chicago Urban Poverty and Family Life Conference, October 1991, p. 31.

levels of education no longer have access to jobs that pay a good working-class wage. Worse, to find jobs at all, they need transportation to the suburbs.[24]

Rev. Henry Williamson, president of Operation PUSH, described the cost in terms of jobs lost nationwide and, in the Chicago area, of these major economic changes, which he attributed in large part to increased foreign competition:

> Between 1970 and 1990, the steel industry lost 670,000 jobs, the auto industry lost 450,000 jobs, the electronics industry lost 350,000 jobs. When an auto plant is closed, this also impacts related industry such as tires, foam, and glass. In total, since 1970 light and heavy manufacturing lost 4.7 million jobs nationally. Over the past two decades we have seen entire communities and regions decimated by factory shut-downs. . . . In the city of Chicago alone, since 1979, 33 percent or 115,000 of the city's 350,000 factory jobs have been taken out of the economy. If you look at the northern Illinois and Indiana [area], we have experienced a net loss of 1.3 million jobs since 1970.[25]

Reverend Williamson explained that industrial restructuring has had a particularly severe impact on the black community:

> If white America has the flu, then the black community has pneumonia. We, as a community, suffer from higher unemployment, proportionally, than any other segment of society, and the prospects for growth and employment in the future are not good. . . . When multinational firms locate new factories in the United States, they are not located where blacks and other minorities can find employment. . . . The jobs that have come to the Chicago area have gone to the suburbs. Since 1970 the suburbs surrounding Chicago have experienced a net growth of 250,000 jobs. But obtaining information about these jobs, in these areas, as well as commuting to these suburban places, places an additional burden on members of the African American and minority community.[26]

In the analysis of another witness at the Chicago hearing:

> [There are] fundamental changes taking place in the area economy, changes some people are better able to take advantage of than are others. College educated blacks have taken advantage of the expanding opportunities in the professional and technical sectors of the service economy. Conversely, those blacks who dropped out of high school or have not gone to college find themselves hurt by the declining manufacturing base that in the past afforded liveable wages for relatively uneducated persons.[27]

> Although white workers also suffered from the loss of manufacturing jobs in Chicago during the 1980s, their generally superior education tends to make them more flexible. Because much of regional job growth is taking place in virtually all-white suburbs, whites are also better positioned to take advantage of these economic changes in that they do not have to fight persistent discrimination in hiring. . . . [S]egregation, combined with persistent poverty and an occupational structure that most economists expect to become increasingly divided into low wage service jobs and much higher paying technical and professional jobs, only promises to produce greater racial conflict in the future.[28]

One witness commented that industrial restructuring also has an impact on Latinos:

> Chicago continues to hemorrhage, as jobs leave by the thousands. The past decade has been a period when entire communities have been dislocated or thrown away as a result of the deindustrialization. This has been true of Latino and black communities alike. Runaway plants, plant closings, drastic labor force reductions, and unemployment have meant disintegration of

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24 *See* William Julius Wilson, *The Truly Disadvantaged*, pp. 39–46; and John Kasarda, "Urban Change and Minority Opportunities," in Paul E. Peterson, ed., *The New Urban Reality* (Washington, D.C.: The Brookings Institution, 1985).

25 Reverend Henry B. Williamson, National President, Operation PUSH, testimony, *Chicago Hearing*, vol. 1, pp. 47–48, 51.

26 Ibid., pp. 50, 51, 52.

27 Dr. James H. Lewis and Nikolas C. Theodore, Supplemental Testimony, *Chicago Hearing*, p. 2 (hereafter Lewis and Theodore, Supplemental Testimony).

28 Ibid., pp. 2–3.

families and, in fact, entire communities, increasing the numbers of poor families, homelessness, and drastic reductions in personal and family income. Communities like Englewood, Garfield Park, and the Lower West Side have lost more than 50 percent of their manufacturing base in just the past 7 years. Latino workers have the highest rate of worker displacement of any major population. We are 23 percent more likely than whites to lose our jobs through plant closings. And when a job is lost, Latino workers are 39 percent more likely than whites to have had no job since being displaced.[29]

The outcome of all of these forces is a city in which, as is prevalent throughout this nation, economic well-being is clearly linked to race and ethnicity. With respect to African Americans, one witness testified:

The crisis in economic development in the economic community for African Americans requires that we look at African Americans as an underdeveloped nation, not just a race of people. We are an underdeveloped nation located within the geographic boundaries of a major world economic capitalistic power.[30]

The stark and growing economic gaps between blacks and whites in Chicago were summarized by Dr. James Lewis and Nikolas Theodore of the Chicago Urban League:

As was the case ten years ago, one-third of Chicago blacks remain in poverty today, versus one in ten whites. Nearly half of Chicago's African American children currently live in poverty, a five percent increase from ten years ago. These patterns are largely a product of a 19 percent black unemployment rate in the city which exceeds the white rate by more than a three to one ratio. Black unemployment is four percent higher today than it was ten years ago.

In Chicago, the gap between white and black median household income actually widened during the decade [of the 1980s]. By 1989, white Chicago households averaged $31,460 to black households' $19,899. The suburbs exhibited a similar pattern.[31]

A recent report analyzing 1990 census data indicates that, economically, Chicago's Hispanics also lag behind whites. The Latino median household income of $28,556 was 30 percent lower than the white household income of $40,775. One-quarter of Chicago's Latinos live under the poverty level, in comparison to 1 in 10 whites. The unemployment rate of Latinos was twice as high as that of whites.[32]

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29 Esther Lopez, Director of the Immigrant Community Services Division of Travelers and Immigrants Aid, testimony, *Chicago Hearing*, vol. 3, p. 106.

30 Wilson Testimony, *Chicago Hearing*, vol. 3, p. 146.

31 Lewis and Theodore, Supplemental Testimony, *Chicago Hearing*, p. 2.

32 Chicago Urban League, Latino Institute, and Northern Illinois University, *The Changing Economic Standing of Minorities in the Chicago Metropolitan Area*, Interim Report, 1992, pp. 8, 13, 21.

Chapter 1. Access to Credit and Minority Business Development

Credit Discrimination

Discrimination against minorities in the provision of credit, both for home buyers and for business enterprises, decreases minorities' chances of finding affordable housing and escaping from low-income and poverty statuses. Witness testimony and other sources suggest that credit discrimination in the mortgage market is a serious problem, both nationwide and in the city of Chicago, often taking the form of "redlining" by banks, or the denial of credit to entire, usually predominantly minority, neighborhoods.

Referring to a Woodstock Institute report, which delineates the amount of mortgage lending by neighborhood in Chicago,[1] one witness testified that the total amount of mortgage lending in Chicago's minority neighborhoods is much below that in comparable white neighborhoods. With the following example, she charged that banks' practice of not lending in blocks with at least one abandoned house produces a pattern of redlining in Chicago.

> One ACORN [Association of Community Organizations for Reform Now] member received a flyer in the mail from her bank last summer. The flyer was encouraging her to apply for a home improvement loan, which she very much needed. When she called the bank to inquire about the loan, the first question she was asked was, "Are there any abandoned buildings on your block?" Now in Englewood where this particular woman lives, most blocks have at least one abandoned building. She told the bank yes, that there was one vacant building on her block. Then the banker told her, "You don't qualify for the loan. You know, if you've got an abandoned building on your block, sorry, we will not give you any money."[2]

> Many banks use the existence of abandoned buildings on a near block as a reason for loan denial, but such a criterion has a snowball effect on African American communities. The bank's refusal to [lend] creates abandonment, which in turn creates a reason for more loan denials. When a bank redlines a community, and, in fact, refuses to make loans there, it creates a problem that no government program can solve.[3]

The director of the Latino Institute, a not-for-profit research and advocacy agency, explained that difficulties in obtaining credit also plague Chicago's Hispanics. She cited a Latino Institute study showing that "there is below-average lending for housing in at least half of the ten largest Latino communities, and that in at least three others, gentrification is occurring."[4]

Although minorities' limited access to credit may be in part the result of racially nondiscriminatory bank practices, there is mounting evidence, both nationwide and in Chicago, that banks discriminate against minorities in mortgage lending. Over the past several years, numerous analyses of data on bank loans have found that the mortgage loan applications of minorities are denied much more frequently than those of white home buyers, even after controlling for certain basic characteristics of the applicants, such as annual income. Most recently, the Federal Reserve Board found that, nationwide, in 1991 black mortgage applicants were turned down roughly twice as often as whites; and Hispanic mortgage

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1 Woodstock Institute, *The 1991 Community Lending Factbook*, May 1993.

2 Sandra Maxwell, representative from Association of Community Organizations for Reform Now (ACORN), testimony, *Chicago Hearing*, vol. 1, pp. 298–99.

3 Ibid., p. 299.

4 Migdalia Rivera, Executive Director, Latino Institute, written statement submitted at *Chicago Hearing*, p. 6.

applicants were turned down almost one and a half times as often.[5] The *Wall Street Journal* reports that, in Chicago, the gap between the black and white rejection rates is much larger than the national average and the largest among the Nation's top 10 metropolitan areas: Black mortgage applications were rejected more than three times as often as white applications.[6]

Under recent revisions of the Home Mortgage Disclosure Act (HMDA),[7] commercial banks and savings and loans are required to report to Federal regulators on the disposition of all loan applications they receive. They also are required to report the race/ethnicity of the applicant, the income of the applicant, and the location of the property for which the loan is requested. These data permit researchers to explore partially the reasons why minorities are denied loans at a higher rate than whites, such as lower minority average incomes. Studies that have analyzed these data have found that controlling for income only reduces the black-white gap in rejection rates slightly. In 1990, the first year such analyses were performed, blacks in the *highest* income levels were actually more likely to have their loan applications rejected than whites in the *lowest* income category.[8] Although this was no longer true in 1991, the 1991 data continued to reveal large minority-nonminority differences in application rejection rates within income categories. In every income category except for the lowest, blacks were at least twice as likely to be rejected as white applicants when they sought conventional loans to purchase a home.[9]

The Woodstock Institute found a similar pattern in Chicago, where blacks earning between $25,000 and $50,000 were denied loans 1.75 times more often than whites, and blacks earning between $50,000 and $75,000 were rejected 1.68 times more often. Blacks earning above $75,000 were rejected more often than whites with incomes between $25,000 and $50,000.[10]

The stark racial and ethnic disparities found in the HMDA data have galvanized the national spotlight on the problem of credit discrimination. Because the HMDA data include neither information on the credit histories, debt-to-income ratios, and other salient characteristics of the loan applicants, nor much important information on the properties for which they are requesting loans, the HMDA data cannot prove conclusively the existence of credit discrimination on the part of banks. Nor do they reveal much about the points in the application process that such discrimination occurs. Furthermore, the HMDA data only reflect loan applications actually completed by applicants, and, therefore, can reveal nothing about prospective applicants who were dissuaded from pursuing the application process.

Several recent studies have relied on additional information about loan applications with contrasting results. In the first of these studies, the New York State Banking Department examined underwriting standards and loan application data for 10 savings banks in the New York City metropolitan area. It reviewed actual loan applications, and, thus, had much more information on loan applicants (such as their credit histories, debt ratios, etc.) available to it than researchers using the HMDA data. The banking department concluded that some aspects of the underwriting

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5 Glenn B. Canner and Dolores S. Smith, "Expanded HMDA Data on Residential Lending: One Year Later," *Federal Reserve Bulletin*, November 1992, p. 806 (hereafter Canner and Smith, "Expanded HMDA Data").

6 Paulette Thomas, "Persistent Gap: Blacks Can Face a Host of Trying Conditions in Getting Mortgages," *Wall Street Journal*, Nov. 30, 1992. See also Woodstock Institute, *Reinvestment Alert*, Bulletin 2 (May 1993).

7 12 U.S.C. § 2801–2811 (1988). Specifically, Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), Pub. L. No. 101–73, 103 Stat. 183 (codified in scattered sections of 12, 5, 15 U.S.C.).

8 David R. Sands, "Regulators Bear Brunt of Loan-Bias Criticism," *Washington Times*, May 15, 1992. Original source is a Federal Reserve analysis by Glenn Canner.

9 Canner and Smith, "Expanded HMDA Data," p. 812.

10 Woodstock Institute, *Reinvestment Alert*, Bulletin 2 (May 1993), p. 3.

standards used by the banks might affect minorities adversely,[11] but that the banks generally applied the underwriting standards similarly for both minority and nonminority applicants. It found that the vast majority (82 percent) of approved loans were within the banks' underwriting standards. The remaining 18 percent of approved loans had "offsetting factors" that accounted for their approval.[12] Probing deeper, the banking department compared minority applicants whose loans were denied for failing to meet underwriting standards with white applicants whose loans were approved despite failing to meet the standards. It concluded that "there were major differences in creditworthiness between the denied minority applicants and the approved white applicants"[13] and hence that the banks had not made exceptions to the underwriting standards more readily for white applicants than for minority applicants.

A study undertaken by the Federal Reserve Bank of Boston, on the other hand, found that significant racial differences in loan approval rates remained even after accounting for racial differences in all loan characteristics deemed by mortgage bankers themselves to be important factors entering their decision on whether to approve a loan. For that study the Boston Federal Reserve Bank collected detailed data on more than 3,000 mortgage applications from the Boston metropolitan area. For each mortgage application, these data included all information on the applicants (e.g., credit history, income, job stability) and loans (e.g., loan-to-value ratio) that normally is used by mortgage bankers in making loan decisions. In the bank's sample, 10.3 percent of white applicants and 28.1 percent of minority applicants were denied.[14] The bank's statistical analysis of data on the characteristics of the loan applications revealed that if minority applicants had been treated the same as white applicants, only 20.2 percent of their applications would have been denied.[15] In other words, the probability of a minority applicant's mortgage loan application being denied was roughly one-third higher than the corresponding probability for a white applicant with identical loan characteristics.

Interpreting these findings, the Boston Federal Reserve Bank observed that, although minorities and nonminorities with "perfect" loan applications were highly likely to have their loan applications approved, the bulk of loan applications were "flawed," requiring lenders to exercise judgment in making the lending decision. "[F]or the same imperfections whites seem to enjoy a general presumption of creditworthiness that black and Hispanic applicants do not, and . . . lenders seem to be more willing to overlook flaws for white applicants than for minority applicants."[16]

Thus, the New York State Banking Department study found that minority and nonminority applications were treated similarly, whereas the Boston Federal Reserve Bank found that race and ethnicity have a significant bearing on an applicant's chances of gaining loan approval. The different results of these two studies likely are due to loan officers making greater efforts to obtain documentation that casts white applicants' loan applications in a favorable light than they do for minority applicants. When such practices occur, an examination, such as the one undertaken by the New York State Banking Department, of minority and nonminority applications indeed would reveal that approved loan applications of whites not meeting basic underwriting requirements had

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11 These included high minimum loan amounts; short maximum maturities (15-year loans as opposed to 25 or 30-year loans); and low minimum loan-to-value ratios or high down payment requirements.

12 Ernest Kohn, Cyril E. Foster, Bernard Kaye, and Nancy J. Terris, *Are Mortgage Lending Policies Discriminatory? A Study of 10 Savings Banks*, New York State Banking Department, March 1992, pp. 21–22.

13 Ibid., p. 23.

14 Alicia H. Munnell, Lynn E. Browne, James McEneaney, and Geoffrey M.B. Tootell, *Mortgage Lending in Boston: Interpreting HMDA Data* (Boston: Federal Reserve Bank of Boston, October 1992), table 2, p. 21.

15 Ibid., p. 40.

16 Ibid., p. 3.

extenuating circumstances documented in the files, whereas rejected applications of minorities would not have such documentation—not because extenuating circumstances did not exist, but because loan officers did not look for them.

A different methodology, testing,—or sending matched minority and nonminority testers into banks posing as prospective loan applicants and comparing and contrasting the treatment each receives—has provided further evidence suggesting that much of the racial disparities found in the HMDA data may indeed be the result of differences in treatment of loan applicants based on race and/or ethnicity. Several testing studies, while preliminary, have found suggestive evidence of differential treatment of prospective applicants based on race. For example, blacks may be discouraged in subtle ways from filling out applications or given misinformation or less information than whites.[17] It is likely that if prospective applicants receive differential treatment based on race/ethnicity, so do applicants, and, thus, the HMDA data probably reflect differential treatment of applicants.

One of these studies was conducted by the Chicago Fair Housing Alliance in the Chicago area. The Chicago Fair Housing Alliance study was an experimental program that tested 10 institutions and found evidence of discrimination at seven of them. In particular, the black testers had greater difficulty getting a loan officer to discuss a loan with them; even when they were able to discuss the loan, they were seldom provided information about their likelihood of qualifying for the loan; and loan officers were generally less helpful to black testers than to their white counterparts.[18]

The large gap between the mortgage application rejection rates of minorities and nonminorities revealed by Home Mortgage Disclosure Act (HMDA) data confirms that minorities do not enjoy the same credit opportunities as whites. The evidence reviewed in the above suggests that a large part of the discrepancy is the direct result of illegal discriminatory treatment of minorities by lenders. Furthermore, much of the remaining disparity may be the indirect result of other forms of discrimination, such as housing discrimination—which results in minorities seeking loans for houses in less desirable neighborhoods—or employment discrimination, which reduces the incomes and job stability, and hence the creditworthiness, of minority applicants.

Without credit, homeowners can neither sell their homes nor make home improvements. Houses that once were stately homes become dilapidated and abandoned buildings, eyesores where crime can fester. Businesses cannot create the jobs that would lead to economic revitalization of the community. Without credit, hopelessness sets in, and apathy, and despair follow.

Witnesses at the Chicago hearing maintained that although Federal law prohibits credit discrimination against minorities, Federal enforcement of these laws has been inadequate.[19] For instance, Dr. Calvin Bradford, president of Community Reinvestment Associates, a housing advocacy and research firm, asserted:

> It is fair to say that [the Department of Housing and Urban Development] and the financial regulatory agencies have taken the reinvestment and fair housing and fair lending laws and turned civil rights by law into a

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17 George Galster, "The Use of Testers in Investigating Mortgage Lending and Insurance Discrimination," paper presented at the Rockefeller Foundation/Urban Institute "Conference on Testing for Discrimination in America: Results and Policy Implications," August 1991, pp. 23–30.

18 Shanna L. Smith and Cathy Cloud, "The Role of Private, Non-Profit Fair Housing Enforcement Organization in Lending Testing," paper presented at the Home Mortgage Lending and Discrimination Research and Enforcement Conference, convened by the U.S. Department of Housing and Urban Development with the assistance of the Office of the Comptroller of the Currency, May 18–19, 1993, p. 9.

19 Similar concerns were addressed by this Commission's Report, *The Fair Housing Amendments Act of 1988: The Enforcement Report* (September 1994) (hereafter *Fair Housing Enforcement Report*).

process of apartheid by regulatory enforcement, neglect, and abuse.[20]

Vincent Lane, of the Chicago Housing Authority, attributed the problems to a broad failure of public policy to ensure access to credit in minority neighborhoods:

> [There is an] absolute inability of even competent and qualified developers and individuals to have access to credit in minority neighborhoods. . . . The lending institutions in this country have a horrible, horrible track record, and that track record has been, in my opinion, fostered by public policy.[21]

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20 Calvin Bradford, President, Community Reinvestment Associates, Des Plaines, IL, testimony, *Chicago Hearing*, vol. 1, p. 262.

21 Vincent Lane, Chair, Chicago Housing Authority, testimony, *Chicago Hearing*, vol. 1, pp. 305–06, 313.

Chapter 2. Federal Enforcement of Antidiscrimination Laws in Economic Development

Enforcement of the Federal Fair Lending Laws

In the face of mounting evidence of the persistence of credit discrimination in the mortgage market, the question of the adequacy of Federal enforcement of the Nation's fair lending laws becomes critical. Several Federal laws prohibit credit discrimination in the housing market. In 1968 the Fair Housing Act[1] banned all forms of discrimination against minorities in the housing market, including lending discrimination. In 1976 the Equal Credit Opportunity Act, which in 1974 had made all forms of credit discrimination on the basis of gender and marital status illegal, was extended to cover credit discrimination on the basis of race, color, national origin, and certain other personal characteristics.[2]

A number of Federal agencies enforce these two laws. The Fair Housing Act is enforced by the Department of Housing and Urban Development (HUD). Until recently, HUD's authority was limited to investigating complaints, but the Fair Housing Amendments Act of 1988,[3] which substantially strengthened the enforcement provisions of the Fair Housing Act and expanded coverage to persons with disabilities and families with children, gave HUD the authority to initiate investigations of discrimination. The Equal Credit Opportunity Act is enforced by the financial regulatory agencies (the Federal Reserve Board (Fed), the Office of Thrift Supervision (OTS), the Office of the Comptroller of the Currency (OCC), the Federal Deposit Insurance Corporation (FDIC), and the National Credit Union Administration), each of which has jurisdiction over different types of lending institutions, and other Federal agencies, including the Federal Trade Commission (FTC).[4] HUD has the authority to investigate, make cause determinations, and administratively enforce the Fair Housing Act, unless one or both parties choose to litigate in Federal District Court. The financial regulatory institutions have similar authority under the Equal Credit Opportunity Act and other statutes to investigate and prosecute discrimination in lending.[5] The Federal regulatory agencies conduct periodic examinations of lending institutions' lending behavior and also investigate complaints. They can refer cases to the Department of Justice for pursuit in the courts.

Witnesses at the Chicago hearing provided numerous examples that, combined, indicate a pattern of lax enforcement of Federal credit discrimination laws by Federal regulators. Furthermore,

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1 42 U.S.C.A. §§ 3601-3619, 3631 (West 1977 & Supp. 1994). Title VIII of the Civil Rights Act of 1968.

2 15 U.S.C § 1691 (1988).

3 42 U.S.C.A. §§ 3601-3619 (West 1977 & Supp. 1994).

4 The Federal Reserve Board regulates State banks that are members of the Federal Reserve System; OTS regulates federally insured Savings and Loan Institutions; OCC regulates national banks; the FDIC regulates federally insured State chartered banks that are not members of the Federal Reserve System; the National Credit Union Administration regulates federally chartered credit unions; and the FTC regulates mortgage banking companies and other creditors. *See* U.S. Department of Housing and Urban Development, *The State of Fair Housing: Report to Congress Pursuant to Section 808(e)(2) of the Fair Housing Act*, 1990, p. 19.

5 HUD and the Federal Financial Institutions Examination Council member agencies executed a Memorandum of Understanding in 1991 to outline the relative responsibilities of HUD and the financial regulatory institutions. Presently, the Government's Interagency Task Force on Lending is interpreting and clarifying the provisions of that Memorandum of Understanding.

Federal regulators only recently have begun to explore innovative approaches to law enforcement, such as the use of testing as an enforcement tool. Even now, one agency, the Federal Reserve Board, continues to refuse to explore implementing a testing program. (The Commission heard similar testimony at its May "National Perspectives" hearing in Washington, D.C.)[6]

Federal Enforcement Efforts at the Time of the Hearing

Witnesses at the Chicago Hearing alleged that the regulatory agencies were doing almost nothing to enforce the fair lending laws.[7] As of 1989, not one fair lending case had been reported to the Justice Department by a regulatory agency.[8]

Furthermore, according to Dr. Bradford, bankers and enforcement officials are poorly trained on fair lending requirements.[9] He cited several examples from his own experience, including a conversation he had with a Federal Deposit Insurance Corporation (FDIC) examiner who erroneously assured him that buildings with more than four units were not covered under the Fair Housing Act.[10] Dr. Bradford testified that the "worst case of this training" he had discovered was in Toledo, where Federal officials failed to call Home Savings of America (the Toledo branch), on its noncompliance with numerous regulations.[11]

> In one time period this bank had lost two-thirds of all of the documents it was supposed to record. . . . The branch manager of that office said, well, she just wasn't trained by the savings and loan on how to use this information.[12]

One wonders about how the largest savings and loan in the country could not train people this way. One also wonders about how the regulator, now the Office of Thrift Supervision, could have allowed the largest lender in the United States to carry on this way and lose two-thirds of all its records, when it has a long section in its compliance manual telling its examiners that the first thing they are supposed to do is to look at individual records and see if they're reported correctly in this loan log.[13]

Interestingly enough, or in my mind, something that is outstanding or outrageous or bizarre, the branch

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6 *See* Allen Fishbein, General Counsel, Center for Community Change, testimony, *Washington, D.C. Hearing*, vol. 2, pp. 106–10.

7 Bradford Testimony, *Chicago Hearing*, vol. 1, p. 268.

8 Calvin Bradford, "Never Call Retreat: The Fight Against Lending Discrimination," *Credit by Color: A Report from the Chicago Area Fair Housing Alliance*. January 1991, p. 14 (hereafter Bradford, "Never Call Retreat").

9 This charge was reiterated by a fair lending expert who said that not one staff member at a regulatory agency had civil rights enforcement experience. Cathy Cloud, telephone interview, Feb. 4, 1993 (hereafter Cloud interview).

Both the OCC and OTS dispute this contention. OCC Deputy Comptroller Stephen M. Cross indicated that the OCC had two experienced fair lending specialists in February 1993 and has since hired a third. Stephen M. Cross, Deputy Comptroller, OCC, letter to Rosalind D. Gray, Acting General Counsel, U.S. Commission on Civil Rights, May 13, 1994, p. 4 (hereafter Cross Correspondence).

The Acting Director of OTS, Jonathan L. Fiechter, told the Commission that OTS had a "dedicated, experienced compliance policy unit [and] a Special Counsel with extensive civil rights enforcement experience, particularly in the fair housing area." Jonathan L. Fiechter, Acting Director, OTS, letter to Rosalind D. Gray, Acting General Counsel, U.S. Commission on Civil Rights, May 13, 1994, p. 2 (hereafter Fiechter Correspondence).

Similarly, since 1990, the FDIC has implemented a compliance examination program that is separate from its safety and soundness examinations. An Assistant Regional Director in each of the FDIC's eight regions manages this program and has no other responsibilities. Andrew C. Hove, Jr., Acting Chairman, Federal Deposit Insurance Corporation, letter to Rosalind D. Gray, Acting General Counsel, U.S. Commission on Civil Rights, May 24, 1994, p. 1 (hereafter Hove Correspondence).

10 Bradford Testimony, *Chicago Hearing*, vol. 1, p. 272.

11 Ibid.

12 Ibid., pp. 272–73.

13 Ibid., p. 273.

manager who failed to record these records and didn't know anything about them now works for one of the largest compliance consulting firms in the United States which trains 750 examiners from all four regulatory agencies in CRA [Community Reinvestment Act] compliance, and in fact this agency was hired specifically by the Office of Thrift Supervision to help them with their compliance. This strikes me as bizarre at best. It's kind of the twilight zone of banking and reinvestment.[14]

Finally, Dr. Bradford asserted that the last three fair housing officers at the Office of the Comptroller of the Currency resigned in protest over that agency's failure to enforce fair lending laws.[15]

As an example of how Federal regulators have failed to enforce fair lending laws, Bradford cited the case of Peter and Dolores Green, a black couple who alleged lending discrimination by Avenue Bank, a bank located in Oak Park, a predominantly white suburb adjacent to the predominantly black Chicago neighborhoods of Austin and Garfield Park.[16] According to documentation supplied to the Commission by Dr. Bradford, the Greens applied to Avenue Bank for a mortgage on their six-unit building in Garfield Park in December 1989. They supplied the bank a copy of an appraisal, performed 19 months previously, placing the value of the building at $65,000, an amount slightly less than the mortgage the Greens were requesting. They also supplied a copy of a more recent offer to buy the building at the price of $90,000. Avenue Bank which did not conduct its own appraisal of the building, rejected the Greens' loan application but never gave them a written reason for the rejection. The Greens subsequently were approved for a similar loan by another bank in Chicago.[17] The Greens sued Avenue Bank for lending discrimination and, in December 1992, a judgment against the bank was entered, awarding the couple $125,000 plus attorneys' fees and costs, for a total of approximately $250,000.[18]

In December 1990, before filing suit, the Greens had filed a formal complaint with the Federal Deposit Insurance Corporation (FDIC). Bradford testified that the FDIC did not follow established procedures in conducting its investigation in response to the Greens' complaint.[19] Contrary to procedure, the FDIC did not contact the Greens to obtain relevant documentation, and instead accepted the bank's contention, supported by the 19-month-old appraisal (the bank did not provide the FDIC with a copy of the $90,000 offer for the property), that the loan application had been rejected because the value of the property was below the requested loan amount. The FDIC also did not determine whether the bank ever gave the Greens a written reason for their rejection and notice of their rights under the Fair Housing and Equal Credit Opportunity Acts as required by law.[20] When interviewed by Dr. Bradford, a senior FDIC examiner said, "We trust our banks," as an explanation why the FDIC never contacted the Oak Park couple and why the FDIC did not ask whether the bank had provided them with a proper adverse action notice. The same examiner told Dr. Bradford that the FDIC really did not have any formal guidelines for investigating

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14 Ibid., pp. 273–74.

15 Ibid., p. 269.

16 Ibid., pp. 274–76.

17 Calvin Bradford, "Case Story: Peter and Dolores Green v. Avenue Bank of Oak Park (91 C 7730–Northern District of Illinois, 1991). *See also* Calvin Bradford, Statement before the Subcommittee on Consumer Credit and Insurance of the House Banking, Finance, and Urban Affairs Committee, Hearings on The Credit Crisis for American Consumers and Small Businesses, Jan. 27, 1993 (hereafter Bradford, *Subcommittee Statement*).

18 "$125,000 Judgment Entered Against Chicago-Area Bank in Discrimination Lawsuit," *Fair Housing—Fair Lending*," vol. 8, no. 8, Feb. 1, 1993, ¶ 8.1, p. 1.

19 Bradford, written statement submitted at *Chicago Hearing*, pp. 8–9.

20 *See* Bradford, *Subcommittee Statement*.

complaints, when in fact the FDIC compliance manual has 15 pages of explanations of how to conduct an investigation.[21]

With this kind of enforcement going on by . . . the FDIC, which, by the way, violated at least eight other provisions of the guidelines on how to investigate this case, including notifying the complainants of their rights under the Fair Housing and Equal Credit Opportunity Acts, it's no wonder that in 18 years, the Justice Department has never had more than one referral about a violation of the Fair Housing Acts.[22]

Kale Williams, of the Leadership Council for Metropolitan Open Communities, agreed that Federal enforcement of fair lending laws needs to be enhanced:

The Federal regulators of lending agencies ought to be required to take a more aggressive stance in training, testing, and sanctions against institutions which continue to discriminate against individuals because of their race or ethnic background, or against racially defined areas.[23]

Recent Fair Lending Enforcement Initiatives

Since the Commission's hearing, Federal regulators have taken several steps to upgrade the enforcement of fair lending laws, described below. Although these enhanced enforcement initiatives do not target Chicago specifically, they are expected to have an impact there.

Department of Justice

Following a series of articles in the *Atlanta Journal-Constitution* in 1988[24] showing that mortgage applicants in black neighborhoods of Atlanta were rejected at a much higher rate than applicants from white neighborhoods, even after taking neighborhood income levels into account, the Justice Department launched a probe into the lending practices of Atlanta-area banks, eventually singling out Decatur Federal Savings and Loan Association for in-depth investigation. The Department filed suit[25] against Decatur alleging unlawful discrimination on September 17, 1992. The same day, the suit was settled by consent decree, with Decatur Federal agreeing to pay $1 million in damages to victims of discrimination; to change its Community Reinvestment Act borders to include minority neighborhoods; to market its loans to minorities and give its account executives incentives to make loans to minorities; to recruit black applicants for job openings; and to utilize a "check-sheet" to help ensure that all applicants are given equal chances to provide information that will help them qualify for mortgage loans.[26]

The Justice Department's investigation of Decatur Federal likely will serve as a model for future fair lending investigations by the Department. For instance, in conducting its investigation of Decatur Federal, the Justice Department developed a statistical methodology for identifying the factors that were actually important in determining loan outcomes and for identifying victims of discrimination. James Turner, Acting Assistant Attorney General for Civil Rights, has estimated that:

[w]ith the experience we have gained, . . . a *Decatur*-type investigation can be completed in a period of six to nine months, assuming that the targeted institution cooperates. The costs of these types of investigations

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21 Bradford Testimony, *Chicago Hearing*, vol. 1, pp. 275–76.

22 Ibid., p. 276.

23 Williams Testimony, *Chicago Hearing*, vol. 1, pp. 197–98.

24 Bill Dedman, "The Color of Money," *Atlanta Journal-Constitution*, May 1-16, 1988 (hereafter Dedman, "Color of Money").

25 United States of America v. Decatur Fed. Sav. and Loan Ass'n, 1-92-CV-2198 (N.D.Ga. filed Sept. 17, 1992).

26 Ibid., Consent Decree.

will be in the range of $300,000 to $500,000; this cost range is comparable to major employment discrimination litigation in which we utilize similar statistical methods of analysis.[27]

The *Decatur* case was filed after a series of articles by the *Atlanta Journal-Constitution*[28] and was not reported to the Justice Department by a regulatory agency.[29] Since the *Decatur* case, however, the Federal regulatory agencies have increased the number of cases they have referred to the Justice Department. OTS, for example, has made five referrals to the Justice Department since March 1993.[30] The OCC has made four referrals to the Justice Department since the Chicago hearing.[31] The Federal Reserve Board referred the Shawmut Mortgage Corporation of Boston, Massachusetts, to the Justice Department in March 1993.[32] Altogether, the agencies have referred about a dozen cases to the Department of Justice.[33]

Interagency Task Force on Fair Lending

In May 1993 OCC and HUD also announced the formation of a joint working group formed to strengthen the Government's approach to fair lending enforcement. The joint work group was given 60 days to report to the Secretary of HUD and to the Comptroller of the Currency. The group's task included developing an interagency definition of what constitutes lending discrimination for dissemination to examiners and to the banking industry, and exchanging technical expertise across agencies.[34] Later joined by the other Federal regulatory agencies, the joint working groups became the Interagency Task Force on Fair Lending. In March 1994 the Interagency Task Force issued a "Policy Statement on Discrimination Lending," to provide guidance as to what constitutes lending discrimination and to provide a common foundation for the agencies' rulemaking.[35] The policy statement discusses and provides examples of three methods of proof of lending discrimination: overt evidence of discrimination, evidence of disparate treatment, and evidence of disparate impact.[36] In addition the policy statement enumerates the types of information that an agency should examine in deciding whether to refer a case to the Justice Department.[37]

Also in May 1993, the OTS, the Federal Reserve Board, the OCC, and the FDIC sent a joint letter to lending institutions suggesting a number of

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27 James V. Turner, Acting Assistant Attorney General, Civil Rights Division, Statement before the Committee on Banking, Housing, and Urban Affairs Concerning Mortgage Lending Discrimination, Feb. 24, 1993 (hereafter cited as Turner Statement).

28 Dedman, "Color of Money."

29 *See* Turner Statement, p. 16.

30 Fiechter Correspondence, p. 1.

31 Cross Correspondence, p. 2.

32 See Mitchell Zuckoff, "U.S. Begins Bias Probe of Shawmut," *Boston Globe*, Mar. 9, 1993.

33 "Federal Reserve Staff Comments on Draft Report," attachment to Griffith L. Garwood, Director, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, letter to Rosalind D. Gray, Acting General Counsel, U.S. Commission on Civil Rights, May 25, 1994 (hereafter, Federal Reserve Staff Comments), p. 1.

34 Department of Housing and Urban Development and Office of the Comptrolier of the Currency, "Interagency Group to Study Lending Discrimination Issues," Joint News Release (HUD No. 93-30; OCC No. 93-45), May 18, 1993.

35 Interagency Task Force on Fair Lending, "Policy Statement on Discrimination in Lending," Mar. 8, 1994, p. 1.

36 Ibid., pp. 5–9.

37 Ibid., pp. 14–15.

steps lenders could take to improve their fair lending practices.[38]

Department of Housing and Urban Development

According to Roberta Achtenberg, the Assistant Secretary for Fair Housing and Equal Opportunity, the Department of Housing and Urban Development (HUD) recently has taken several steps to enhance HUD's fair lending enforcement. As part of a major reorganization of HUD's Office of Fair Housing and Equal Opportunity, HUD has created an Office of Regulatory Initiatives and Federal Coordination, which is drafting regulations on lending, property insurance, and disparate impact. The regulations are intended to assist lending and insurance institutions to comply voluntarily with the Fair Housing Act, as well as to provide guidance for the Federal financial regulatory agencies and the courts. In addition, Assistant Secretary Achtenberg reported that HUD has issued a Secretary-initiated complaint against a mortgage company; entered into an agreement with DOJ to cooperate on investigations; and attempted to increase cooperation with State and local governments.[39]

Office of the Comptroller of the Currency

In May 1993 the Office of the Comptroller of the Currency (OCC) began implementing revised fair lending examination procedures based upon recent research on lending discrimination by the Federal Reserve Bank of Boston (Boston Fed), as well as on the Justice Department's experience in the *Decatur* case.[40]

Whereas the supplanted OCC examination procedures were based primarily on reviews of individual mortgage loan files to determine whether there were clear reasons justifying accept and reject decisions, the Boston Fed study and the *Decatur* case indicated that most instances of credit discrimination cannot be uncovered through such methods. Lending discrimination rarely takes the form of clearly qualified applicants being accepted or rejected selectively on the basis of race, which could be detected through reviews of individual loan files. Rather, discrimination takes the form of loan officers providing less guidance to minorities on how to qualify for loans, or making fewer exceptions to underwriting standards for minority applicants. Therefore, a comparative examination of files—to discern whether similarly situated minority and white applicants are treated in the same way—is necessary to detect discrimination. OCC's new procedures reflect this insight into the forms credit discrimination usually takes. The revised procedures require examiners both to compare the outcomes for similarly qualified minority and white applicants and to determine whether banks give "equivalent opportunities to demonstrate creditworthiness and equivalent levels of assistance to minority and non-minority applicants during the loan process."[41]

According to Deputy Comptroller Cross, since the Chicago hearing, the OCC also has:

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38 Alan Greenspan, Chairman, Board of Governors of the Federal Reserve System, Andrew C. Hove, Jr., Acting Chairman, Federal Deposit Insurance Corporation, Jonathan L. Fiechter, Acting Director, Office of Thrift Supervision, and Eugene A. Ludwig, Comptroller of the Currency, Office of the Comptroller of the Currency, letter to Chief Executive Officers, May 27, 1993.

39 Roberta Achtenberg, Assistant Secretary for Fair Housing and Equal Opportunity, letter to Rosalind D. Gray, Acting General Counsel, U.S. Commission on Civil Rights, May 24, 1994 (hereafter Achtenberg Correspondence). *See generally Fair Housing Enforcement Report*, pp. 5–6, 189–94, 244–45.

40 Office of the Comptroller of the Currency, "OCC To Use New Examinations to Identify Loan Discrimination," OCC News Release, no. 93-39, May 5, 1993. The procedures are contained in "Examining Bulletin 93-3," distributed to OCC staff by Stephen M. Cross, Deputy Comptroller for Compliance Management, dated Apr. 30, 1993. OCC has distributed these procedures to all national banks. Cross Correspondence, p. 4.

41 Larry Riedman, Office of the Comptroller of the Currency, "Perspectives from a Regulatory Agency," paper presented at the U.S. Department of Housing and Urban Development's Home Mortgage Lending and Discrimination: Research and Enforcement Conference, May 18–19, 1993, p. 5.

- instituted an examiner specialty in compliance, including fair lending;
- hired three fair lending specialists;
- entered into a consent agreement with a national bank along with the Justice Department, based on an OCC investigation, giving relief of $750,000 to 170 black victims of discrimination; and
- begun to develop an econometric model to support examinations for lending discrimination.[42]

Furthermore, the OCC has instituted a pilot testing project, discussed below.

Federal Reserve Board

Like the OCC, the Federal Reserve Board (Fed) has taken steps to change its examination procedures. It has developed a computer assisted statistical model for use in examinations. Also, it has developed a computerized model to help examiners match minority and nonminority pairs of applicants with similar credit characteristics, but different loan outcomes better and more efficiently than previously.[43]

The Fed recently has taken a number of other actions to enforce fair lending laws. In 1993 the Fed referred 14 consumer complaints alleging violations of the Fair Housing Act to HUD, and it has imposed civil money penalties to enforce compliance with the Equal Credit Opportunity Act. The Fed has conducted a 2-week training session for the Federal Reserve Banks' examination staff on fair lending enforcement.[44]

Federal Deposit Insurance Corporation

The Federal Deposit Insurance Corporation (FDIC) began to step up its fair lending enforcement efforts in 1990 when it separated its compliance examinations from its safety and soundness examinations, implemented a community affairs program to conduct outreach, communication, and education on fair lending laws, and instituted a new training program for its compliance specialists. Over the past 3 years, the FDIC has referred 21 cases to DOJ. In 1993 FDIC established an internal fair lending working group which has made a number of recommendations on ways to improve the agency's existing programs designed to prevent, detect, and correct discriminatory credit practices. Furthermore, the FDIC revised its fair housing examination procedures and began an Home Mortgage Disclosure Act disparities investigation project, under which all lending institutions with high disparity rates for minorities will undergo reviews to discover the reasons for the disparities.[45]

Testing as an Enforcement Tool

In recent years, increasing attention has been focused on the use of testing as an enforcement tool for laws banning discrimination.[46] Long used in the housing arena, testing now is being used to detect employment discrimination and lending discrimination as well. The principal advantage of testing over other techniques of identifying discrimination is that it can provide direct evidence of discriminatory practices, particularly subtle forms of discrimination, such as discouraging potential minority applicants from applying for a housing vacancy, a job opening, or a mortgage that are not discernable through file reviews. Testing, therefore, is a potentially more effective method of detecting many of these more subtle forms of discrimination.

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42 Cross Correspondence, pp. 1–2.

43 Federal Reserve Staff Comments, p. 3.

44 Ibid., pp. 2–3.

45 Hove Correspondence.

46 For instance three major conferences focusing on testing were held within a 3 year time span: *Testing for Discrimination in America*, sponsored by the Rockefeller Foundation and the Urban Institute and held in September 1991, Fannie Mae's 1992 Annual Housing Conference, which dealt with the housing market discrimination, and the Department of Housing and Urban Developments 1993 Home Mortgage Lending and Discrimination Research and Enforcement Conference.

Dr. Bradford noted that, although its Consumer Advisory Council recommended that the Federal Reserve Board commence a pilot testing program to detect credit discrimination, the Fed unanimously voted not to do so.[47] Reasons cited for their decision were: 1) staff doubts about cost and feasibility and 2) concerns about the ethics of testing because it required the government to engage in deception.[48]

According to one fair lending expert, however, the Fed's staff cost estimates were high because they were based on the assumption that the purpose of the testing would be to estimate the incidence of discrimination rather than to be used in enforcement. She explained that many more matched pairs are needed for statistical significance than is necessary for legal proof of discrimination in a single incident. Therefore, it would be much cheaper to start a testing program for enforcement purposes.[49]

Furthermore, there is no obvious reason why the ethics of testing in mortgage lending are different from the ethics of testing in the housing and job markets. As noted above, HUD and the courts have sanctioned the use of testing in the housing market. Moreover the Equal Employment Opportunity Commission (EEOC) recently announced that the "EEOC will accept charges of discrimination from civil rights and community organizations filing charges on behalf of testers."[50] The EEOC policy guidance on the use of testers notes that:

> it is well established that testers in the housing area have standing to challenge prohibited discriminatory practices by landlords/realtors. There is no reason to distinguish between the standing of testers in the housing area and testers in the employment context. Therefore, testers who pose as job applicants for the sole purpose of uncovering illegal discrimination have standing to challenge these practices under Title VII.[51]

Since mortgage lending discrimination is prohibited under the Fair Housing Act, as is housing discrimination, testing is also likely legally permissible for lending discrimination.

Recently, the Federal financial regulatory agencies and the Department of Housing and Urban Development (HUD) have undertaken several initiatives designed to move the agencies towards the use of testing for enforcement purposes in the lending area. In April 1990 the Office of the Comptroller of the Currency (OCC) announced that it was instituting a testing program to detect lending discrimination in the preapplication stage of the lending process. Two reasons were cited for not conducting postapplication testing: 1) that a Federal law prohibiting making false statements on some loan applications[52] effectively prevents such testing; and 2) that there were other problems with postapplication testing, such as the need for credit checks.[53] FDIC has ordered its staff to determine whether it too should use testers, and HUD has issued proposed rules that would allow fair housing testers to detect lending discrimination.[54] The FDIC has prepared or issued guidelines to help lending institutions test themselves for illegal discrimination and disparate treatment in the loan application process, but has

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47 Bradford Testimony, *Chicago Hearing*, vol. 1, p. 267.

48 "Federal Reserve Board Rejects Recommendation on Testing for Lending Bias," *Fair Housing—Fair Lending*, vol. 7, no. 5 (Nov. 1, 1991), ¶ 5.5, p. 6.

49 Cloud interview.

50 Equal Employment Opportunity Commission, "EEOC Will Take Charges from Testers to Prosecute Discrimination," Press Release, Dec. 2, 1990.

51 Equal Employment Opportunity Office, Notice containing Policy Guidance on testers, N-915-062, issued Nov. 20, 1990.

52 18 U.S.C. § 1014 (1994).

53 "OCC Announces Testing Program for Lending Bias," *Fair Housing—Fair Lending*, vol. 8, no. 12 (June 1, 1993), ¶ 12.5, p. 7.

54 John H. Cushman, "U.S. to Use Agents to Detect Mortgage Bias," *New York Times*, May 6, 1993.

not decided yet whether the FDIC itself will implement a testing program.[55]

HUD already has begun funding for testing through its Fair Housing Initiatives Program (FHIP) grants to private nonprofit enforcement agencies and plans a special FHIP notice of funding availability (NOFA) dedicated to testing in fiscal year 1994. Under the FHIP, financial resources are provided to private organizations: 1) to carry out testing and other investigative activities and 2) to discover and remedy discrimination in public and real estate related transactions. Moreover, after the passage of the Housing and Community Development Act of 1992, HUD required testing guideline procedures only for those initiatives funded by the agency. Other testing procedures by FHIP participants were not affected by this development.[56] HUD also has used testing projects for the administrative enforcement of complaints.[57] The Federal Reserve Board, however, has not reversed its decision against using testing as an enforcement mechanism.

Enforcement of the Home Mortgage Disclosure Act

The Home Mortgage Disclosure Act (HMDA) was enacted in 1975 with the goal of better enabling community groups to combat the practice of redlining—or not lending in certain (usually predominately minority) neighborhoods—by requiring lenders to disclose the geographical distribution of their loan extensions.[58] Over the years, HMDA's coverage—initially confined to banks, savings institutions, and credit unions with assets of more than $10 million—expanded, so that now virtually every metropolitan lender is covered.[59] Furthermore, HMDA's reporting requirements have increased over the years, most notably with the new requirements imposed by the Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA) in 1989. FIRREA required lenders to report not only on the loans actually made, but also on the disposition of loan applications and the income levels, race, and sex of loan applicants.[60] Enforcement of HMDA falls to the Federal financial regulatory agencies.

Although HMDA data alone cannot prove the existence of discrimination, it can provide "red flags" indicating the possibility of discrimination in lending institutions. Furthermore, HMDA data is widely used by community groups to compel lending institutions to alter their lending practices. One witness described the Home Mortgage Disclosure Act as "the main piece of legislation that people have depended upon to deal with racial discrimination."[61] Yet, at the time of the hearing, the Fed recently had issued revised regulations delaying the public's access to HMDA data.

Although the raw HMDA data had been traditionally released to the public on March 31 of the following year,—at the same time as it was provided to the regulators—when the Fed drew up revised regulations after the enactment of FIRREA, it no longer required lenders to release the data to the public. Because FIRREA greatly expanded the data lenders were required to report, a simple-cross tabulation of the type of data that lenders previously produced was no longer feasible. The Fed decided to move the responsibility for cross-tabulating the HMDA data and for

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55 Hove Correspondence, pp. 2–3.

56 FHIP participants could pursue rights or remedies guaranteed by Federal law, or as a result of other investigative efforts not funded by the private enforcement initiative. *Fair Housing Enforcement Report*, pp. 115–16.

57 Achtenberg Correspondence, attachment.

58 12 U.S.C. § 2801 *et seq* (1994).

59 Allen J. Fishbein, General Counsel, Center for Community Change, "The Ongoing Experiment with Regulation from Below: Expanded Reporting Requirements for HMDA and CRA," paper presented at the Fannie Mae Annual Housing Conference, 1992, pp. 2–3 (hereafter Fishbein, "Expanded Reporting Requirements").

60 Ibid., p. 13.

61 Bradford Testimony, *Chicago Hearing*, vol. 1, p. 266.

producing the disclosure statements from the lending institutions to the supervisory agencies.[62] The Fed collected, assembled, and analyzed the data, releasing HMDA reports for each lender to the public in October of the year following the data collection, or roughly 7 months later than before FIRREA.[63] Over time, the date of availability advanced, so that by 1993 the reports were available to the public in early August.[64]

Dr. Bradford and other community advocates maintained that this delay critically hampers their efforts to deal with lenders, because lenders can always argue that their policies have changed. Furthermore, according to Dr. Bradford, community groups made their point of view known repeatedly before the final regulations were published, but the Fed ignored their concerns, as well as concerns expressed by then-Secretary of Housing and Urban Development, Jack Kemp.[65] The Fed, however, disputes these contentions, saying that it did not receive complaints from community organizations until spring 1990, several months after the regulations were published, following a comment period in December 1989.[66]

Since the Chicago hearing, the Housing and Community Development Act of 1992[67] required financial institutions to make their loan application data available, in raw form, to the public in March of the year after they were collected, at the same time as they are provided to the financial regulators. The law encourages, but does not require lenders to provide the data in census tract order. In March 1993 the Fed issued revised regulations to that effect.[68]

Commenting on the situation, Dr. Bradford testified:

> In a wonderful catch 22, at the same time, or the year before that, the regulatory agencies sent out a policy statement that said they expected community groups to negotiate and deal with lenders before they filed any challenges about the lending record. . . . And then the next year, they took away the single source of data that community groups need to develop a profile to go negotiate with the lender before it's time for a challenge.[69]

The Fed responded:

> The Board fully recognizes the strong interest of community and other groups in gaining access to HMDA data as early as practicable each year. Together with the other member agencies of the FFIEC and HUD, the Board has continued to explore every means to ensure the earliest possible release of the disclosure statements and shorten the period between submission of the data and release of the disclosure statements. For example, institutions that report more than 100 loan entries are expected to submit the data in machine-readable form (either magnetic tape or PC diskettes) which cuts down the agencies' processing time and helps improve data quality.[70]

In a related matter, community groups have also complained about the form in which the data is released by the Fed, maintaining that the computer tapes on which the Fed makes HMDA data available to the public are

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62 Federal Reserve Staff Comments, p. 4.

63 *See* Calvin Bradford, Community Reinvestment Associates, "The 20-Year Effort to Secure Data on Race and Home Lending: A Review of HMDA, FIRREA, and the Fed," May 27, 1992 (hereafter Bradford, "HMDA Review").

64 Federal Reserve Staff Comments, p. 4.

65 "Coalition Calls for CRA, HMDA Reforms," *Fair Housing-Fair Lending*, vol. 7, no. 11 (May 1, 1991), ¶11.10, p. 10; and Bradford, "HMDA Review," p. 2.

66 Federal Reserve Staff Comments, p. 4.

67 Pub. L. No. 102, 550, 106 Stat. 3672 (1992).

68 Federal Reserve Press Release, Mar. 2, 1993.

69 Bradford Testimony, *Chicago Hearing*, vol. 1, p. 267.

70 Federal Reserve Staff Comments, p. 4.

not accessible to users of small computers.[71] Contending that "the purpose of the [Home Mortgage Disclosure] Act was to supply the public with access to data so that people could see and evaluate the lending patterns of various institutions,"[72] Dr. Bradford has argued that the Fed has a responsibility to distribute the data, which involves "at least provid[ing] access to the computerized data in such easily used formats as floppy disks for personal computers."[73] Although this concern was disclosed to Fed officials in a September 1990 meeting, in May 1992, Bradford reported that the Fed had not made any progress in addressing the need for easily accessible computerized HMDA data.[74]

The Fed related the steps it has taken recently to facilitate public access to the HMDA data:

Beginning in January 1993, the HMDA raw data were made available to the public on diskettes for each metropolitan area, thus expanding public access to data. Until then, individual HMDA disclosure statements were available only in hard copy. The raw data (for the entire country) were available only on magnetic tape, which limited access to those organizations and researchers with access to mainframe computers.

In continuing efforts to expand public access, in 1994, the Board is making both the disclosure statements/aggregate reports for metropolitan areas and the HMDA raw data available on CD-ROM. The public will be able to obtain data for the entire country on three or four CD-ROM, which also will contain other information and retrieval software to facilitate and enhance analysis.

The Federal Reserve and the other agencies have continued to explore the expansion of public access to the HMDA data in other ways. Beginning in January 1993, the Board has made available analysis reports for specific financial institutions, in hard copy. Currently the board is working with the other agencies on a plan to make available for public use a data analysis system that was developed initially for the benefit of the agencies' examiners. The system provides a great deal of flexibility in the way the HMDA data can be analyzed, including the ability to analyze the data by specific markets, not just by metropolitan areas. The objective behind this and other public access projects is to facilitate community groups' access to the HMDA data in a meaningful way.[75]

Enforcement of the Community Reinvestment Act

In 1977, 2 years after the initial enactment of HMDA, the Community Reinvestment Act (CRA)[76] was enacted as an additional means of combating redlining. The CRA placed an affirmative requirement on lenders that they help meet the credit needs of all residents in their market areas, including low-income and minority borrowers.

The CRA is enforced by the Federal financial regulatory agencies, which evaluate banks' CRA performance as part of the examination process. To avoid confusion with the examiners' safety and soundness evaluations of banks, which are computed on a numerical scale, banks' CRA performance is graded in descriptive terms. Possible "grades" are: Outstanding, Satisfactory, Needs Improvement, and Substantial Non-compliance. Since FIRREA, banks' CRA ratings have been available to the public upon request.

Regulators have the ability to penalize institutions with poor CRA performance by taking the CRA ratings into account as they make decisions about whether to approve institutions' applications for permission to expand, such as requests to open new deposit facilities, merger requests, etc. The regulatory agencies have rarely used this authority to deny applications, however. As of 1988, regulatory agencies had denied only 8 of

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71 Bradford, "HMDA Review," p. 5.

72 Ibid., p. 3.

73 Ibid., p. 6.

74 Ibid.

75 Federal Reserve Staff Comments, p. 5.

76 12 U.S.C. §§ 2901-2902 (1988).

40,000 applications covered under CRA.[77] The first merger request denied by the Fed, based at least in part on CRA grounds took place in 1989.[78] In December 1991, the Fed rejected a second merger application on CRA grounds, but critics said that the case was so blatant that the Fed had no choice.[79]

The CRA has been used effectively by community groups to negotiate lending agreements with banks in return for not opposing their petitions for expansion approval. Using their analyses of institutions' HMDA data as well as their own knowledge of the institutions, community groups have mounted more than 300 challenges of expansion requests, most of which were withdrawn after the groups had negotiated successful settlements with the banks. According to one expert, these CRA agreements have resulted in between $7.5 billion and $20.0 billion in loan commitments to low-and moderate-income areas.[80]

One potential avenue for strengthened CRA enforcement can be found in the language of the Riegle-Neal Interstate Banking and Efficiency Act of 1994,[81] which requires all banks with interstate branches to comply with the CRA. The Riegle-Neal bill also requires the appropriate Federal financial supervisory agencies to prepare written evaluations of the CRA compliance of those federally regulated financial institutions.

The CRA has been used to particular effect by community groups in Chicago, which has been termed the "birthplace of the community reinvestment movement."[82] It was community groups in that city who started the movement that resulted in the enactment of the Home Mortgage Disclosure Act and, 2 years later, the Community Reinvestment Act. Although few bank expansions took place in Chicago during the early years of the CRA, limiting its use as a tool by community groups in that city, the rise of interstate banking gave community groups new opportunities to use the CRA in 1983, when the First National Bank of Chicago sought to acquire the American National Bank of Chicago. That year, more than 30 community groups joined together to create the Chicago Reinvestment Alliance and threatened a CRA challenge of First National's acquisition plans. The Chicago Reinvestment Alliance negotiated an agreement with First National, which was announced in March 1984. The agreement required First National to commit $100 million over 5 years for single and multifamily housing, mixed-use buildings, and loans to small businesses. Shortly thereafter, the Alliance negotiated similar agreements with Harris Bank and Northern Trust.[83] A 1990 evaluation of the performance of these agreements, collectively known as the Neighborhood Lending Programs, concluded:

> In dollar terms, the Neighborhood Lending Programs generated $117.5 million in 572 loans through August 31, 1989. These loans produced or maintained at least 4,978 housing units. The vast majority of these loans were made with loan products that were not available at the banks before the creation of the programs. . . . The programs have operated thus far, with almost no direct loan losses.[84]

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77 Bradford, "Never Call Retreat," p. 14. Subsequently, the regulatory agencies denied several other applications on CRA grounds. For instance, as of May 1994, the Federal Reserve Board had denied five applications in whole or in part on such grounds. Griffith L. Garwood, Director, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, letter to Rosalind D. Gray, Acting General Counsel, U.S. Commission on Civil Rights, May 24, 1994.

78 Fishbein, "Expanded Reporting Requirements."

79 "Fed Rejects Bank Merger: Applicant's CRA Efforts Too Little, Too Late," *Fair Housing—Fair Lending*, vol. 7, no. 7, Jan. 1, 1992, ¶ 7.1, p. 1.

80 Fishbein, "Expanded Reporting Requirements," pp. 11–12.

81 Pub. L. No. 103–328; 108 Stat. 2338 (1994).

82 Calvin Bradford, "Partnerships for Reinvestment: An Evaluation of the Chicago Neighborhood Lending Programs," (Chicago: National Training and Information Center, 1990), p. 13.

83 Ibid., pp. 13–21.

Dr. Bradford testified that the Neighborhood Lending Programs resulting from banks' CRA agreements with the Chicago Reinvestment Alliance have been extremely successful in fostering neighborhood redevelopment in Chicago:

> Community development corporations, neighborhood organizations, and the lenders pulled in by use of the Community Reinvestment Act were not only making rehabilitation in these [Westside] neighborhoods, they were literally turning these neighborhoods around.

He cautioned, however, that lax Federal enforcement of fair lending laws has threatened the ability of community groups to rebuild their neighborhoods:

> It is a hideous contortion of the philosophy of self-help and community initiative that the government has betrayed through its abandonment of the Fair Housing and [Community] Reinvestment Acts the very people who adopted the private-sector orientation of the Bush and Reagan Administrations.

Dr. Bradford and other witnesses at the Commission hearing testified that the Federal regulatory agencies have seriously failed in their responsibility to enforce the CRA, which in turn has limited the effectiveness of community groups' efforts to negotiate lending agreements with banks. Not only have the regulatory agencies seldom denied expansion requests on CRA grounds, but, charged Ted Wysocki, executive director of the Chicago Association of Neighborhood Development Organizations (CANDO), Federal regulatory agencies examiners give inconsistent CRA ratings:

> After years of keeping their CRA evaluations secret, the regulators are now required by Federal legislation [FIRREA] to send their report cards home, and I think it is questionable how well the regulators are making the grades themselves. We're finding that poor students of community reinvestment are getting good grades, and good students have been picked on. . . . There are surely signs of inconsistency when it comes to exams.[85]

Similarly, Dr. Bradford testified:

> Enforcement of the Community Reinvestment Act has been arbitrary and capricious at best. . . . [T]here seems to be no relationship between your service to minority communities, or, as some people have suggested, maybe the better you serve minority communities, the more likely you are to be punished by the regulators.[86]

Dr. Bradford contrasted the outstanding CRA rating received by Columbia National Bank, whose CRA performance he deemed poor, with the failing rating received by Harris Bank, whose performance, in his view, was excellent:[87]

> In Chicago, the Comptroller of the Currency gave an outstanding rating to Columbia National Bank on the northwest side, which managed to carve out for itself an all-white neighborhood with no low-income neighborhoods; and where it did make loans in low-income, minority neighborhoods, the average value of the loans was $200,000, and all the loans were to white people. In other words, they were gentrifying and displacing, and for that, the Comptroller of the Currency gave them an outstanding rating.[88]

> Harris Bank in Chicago has been one of the leaders in pioneering reinvestment in multifamily buildings. In fact, Harris Bank took on the lion's share of tax reactivation buildings, which in Chicago were abandoned

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84 Ibid., pp. 3–4.

85 Ted Wysocki, Executive Director of the Chicago Association of Neighborhood Development Organizations (CANDO), testimony, *Chicago Hearing*, vol. 1, p. 384. *See also*, Consuelo Pope, President and Chief Executive Officer, Cosmopolitan Chamber of Commerce, testimony, *Chicago Hearing*, vol. 1, p. 392.

86 Bradford Testimony, *Chicago Hearing*, vol. 1, pp. 269, 271. *See also* Pope Testimony, *Chicago Hearing*, vol. 1, p. 392.

87 See Calvin Bradford, "Columbia National Bank Evaluation," June 14, 1991, and Calvin Bradford, "The Federal Reserve CRA Evaluation of Harris Trust and Savings Bank" (Companion to the Analysis of the Comptroller's CRA Rating of Columbia National Bank), July 3, 1991, which provide detailed analyses of the CRA ratings of these two institutions and specify how, in Dr. Bradford's opinion, the examinations of these banks by the Federal financial regulatory agencies were deficient.

88 Bradford Testimony, *Chicago Hearing*, vol. 1, p. 270.

hulks of buildings scattered about the city, and has helped neighborhood people put them back on the market, and for that the Federal Reserve failed them on the Community Reinvestment Act.[89]

In addition to this problem of inconsistent CRA ratings, a recent national analysis of CRA ratings has concluded that CRA ratings are generally inflated, with just 10 percent of banks receiving "Needs Improvement" and "Substantial Noncompliance" ratings.[90]

Charles Hill of the Federal Home Loan Bank of Chicago explained that in most districts, CRA ratings are carried out by the same regulators who conduct safety and soundness examinations and who may not be well trained in performing CRA examinations. He suggested that a "staff of examiners who are solely dedicated to consumer compliance and CRA," as in the Chicago district, is likely to provide more in-depth CRA examinations.[91] OTS indicated that it has had separate examiners who specialized in consumer protection laws and the CRA since 1989,[92] and that the OCC separated its consumer protection/CRA examinations from its safety and soundness examinations in 1993, after the Chicago hearing.[93]

Mr. Wysocki added that the current CRA examination process focuses excessively on documentation and not enough on banks' loan performance.[94] Similar concerns were heard by the Federal Financial Institutions Examination Council which, as part of the Federal Deposit Insurance Corporation Improvement Act of 1991,[95] was required to undertake a thorough review of the banking regulatory process to determine ways in which the regulatory burden on banks could be lessened without diminishing compliance with or enforcement of banking laws. After that review:

> in June 1992, the agencies issued revised uniform CRA examination procedures to clarify the role that documentation should play in assessing CRA performance and the type of documentation that is expected and to focus the examiner's attention on performance rather than process.[96]

Finally, the Commission heard concerns that CRA examiners place too little emphasis on rating banks' small business lending practices, focusing the bulk of their attention on mortgage loans.[97] Given the clear credit problem confronting small and minority-owned businesses to be discussed more fully in the next chapter, the need for the CRA to be applied to business lending as well as to mortgage lending is apparent.

Since the Commission's hearing, in response to the myriad of criticisms of CRA's existing regulations and their enforcement, President Clinton requested the Federal financial regulatory agencies to develop new regulations and procedures that "replace paperwork and uncertainty with greater performance, clarity and objectivity."[98] He called on the regulatory agencies to work to:

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89 Ibid., pp. 270–71.

90 National Community Reinvestment Network and the Greenlining Coalition, *Inflated Grades and Dubious Performance: A Study of the National Implications of CRA Ratings and HMDA Data*, Apr. 23, 1992, p. 2.

91 Charles M. Hill, Sr., Executive Vice President and Community Investment Officer, Federal Home Loan Bank of Chicago, testimony, *Chicago Hearing*, vol. 1, p. 288.

92 Fiechter Correspondence, p. 1.

93 Cross Correspondence, p. 5.

94 Wysocki Testimony, *Chicago Hearing*, vol. 1, p. 384.

95 Pub. L. No. 102–242, 105 Stat. 2236 (codified in scattered sections of 12 U.S.C.).

96 Federal Financial Institutions Examination Council, *Study on Regulatory Burden*, Dec. 17, 1992, p. III-42.

97 Wysocki Testimony, *Chicago Hearing*, vol. 1, p. 384; Wilson Testimony, *Chicago Hearing*, vol. 3, p. 159; and Lewis Testimony, *Chicago Hearing*, vol. 3, p. 161. Similar testimony was heard at the Commission's hearing in Washington, D.C. *See* Fishbein Testimony, *Washington, D.C. Hearing*, vol. 2, pp. 106–10.

promote consistency and even-handedness, improve public CRA performance evaluations, institute more effective sanctions against banks and thrifts with consistently poor performance, and, most significantly, develop and set forth more objective performance-based, CRA assessment standards that minimize the compliance burden on financial institutions while stimulating improved CRA performance.[99]

On December 8, 1994, Eugene Ludwig, the Comptroller of the Currency, unveiled proposed changes to the Community Reinvestment Act (CRA) regulations.[100] The Federal financial regulatory agencies responsible for enforcing the CRA for banks[101]—the Office of the Comptroller of the Currency (OCC),[102] the Federal Reserve Board,[103] the Federal Deposit Insurance Corporation (FDIC),[104] and the Office of Thrift Supervision (OTS)[105]—jointly agreed to seek public comments on the proposed regulations, and on December 21, 1993, they were published in the Federal Register.[106] The proposed regulations incorporate major changes in the way lenders will be examined for CRA performance; institute significant new data reporting requirements; and effectively create new, stronger enforcement tools to penalize institutions with poor CRA performance ratings. On March 8, 1995 at a House Banking subcommittee hearing, Mr. Ludwig stated that Federal regulators will complete their overhaul of the CRA by mid-April.[107]

The Role of the Secondary Mortgage Market

Several witnesses[108] were critical of the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac), which are government-sponsored enterprises set up to create a secondary market in which loan originators can sell their mortgages.

Noting that as government-sponsored enterprises, Fannie Mae and Freddie Mac are under a legal obligation to assist the United States to meet its fair housing goals, Dr. Bradford charged that the two agencies are not serving minority homebuyers.[109] Both Fannie Mae and Freddie Mac responded to these allegations by identifying

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98 President William J. Clinton, Memorandum for The Honorable Eugene Allan Ludwig, Comptroller of the Currency; the Honorable Andrew C. Hove, Acting Chairperson, Federal Deposit Insurance Corporation; the Honorable Alan Greenspan, Chair, Board of Governors, Federal Reserve System; the Honorable Jonathan Fiechter, Acting Director, Office of Thrift Supervision, July 15, 1993.

99 Ibid.

100 Office of the Comptroller of the Currency, "CRA Reform Proposal Would Increase Low-Income Lending and Reduce Regulatory Burden on Banks," News Release 93–128, Dec. 8, 1993.

101 In this memorandum, the term "banks" refers to commercial banks, savings banks, and thrifts.

102 OCC is the primary regulator of nationally chartered banks.

103 The Federal Reserve Board is the primary Federal regulatory agency for U.S. bank holding companies and for State-chartered banks that are members of the Federal Reserve System.

104 The FDIC is the primary Federal regulator of Federally insured State-chartered commercial and savings banks that are not members of the Federal Reserve System.

105 OTS is the primary Federal regulator for Federal and State savings associations and thrift holding companies.

106 *58 Fed. Reg.* 67,466 (1993) (to be codified at 12 C.F.R. Part 25, 12 C.F.R., Part 228, 12 C.F.R. Part 345, and 12 C.F.R. Part 563e) (hereafter cited as "Proposed Regulations"—the proposed regulations for OCC (Part 25) will be cited for convenience, the proposed regulations for the other regulatory agencies are virtually identical).

107 The American Banker, Mar. 9, 1995, p.2.

108 *See* Bradford, written statement submitted at *Chicago Hearing*, p. 4; Hill Testimony, *Chicago Hearing*, vol. 1, p. 291; Lane Testimony, *Chicago Hearing*, vol. 1, p. 349.

109 Bradford, written statement submitted at *Chicago Hearing*, p. 9.

specific steps they have taken to expand access to credit for minority homebuyers.[110]

Bradford indicated that 3 percent of Freddie Mac's and Fannie Mae's purchases involved loans to black homeowners, which, he said, is lower than the percentage of loan originations that go to blacks. The two agencies' purchases of loans made to Hispanic homeowners were also below the percentage of loan originations going to Hispanics.[111] However, since both Fannie Mae's and Freddie Mac's purchases are limited to conventional mortgages (as opposed to government-backed loans) it is more appropriate, as argued by Glenn Canner and Stuart Gabriel in a recent paper, to compare the racial distribution of their loan purchases with the racial distribution of conventional loan originations. Canner and Gabriel found that Fannie Mae and Freddie Mac purchase black and Hispanic loans in equal or greater proportions to their share of conventional loan originations.[112]

Fannie Mae and Freddie Mac have a general practice of purchasing mortgages in bulk from lenders and then conducting periodic audits to determine the soundness of the loans. If they do not believe that a loan is sound, they can force the loan originator to repurchase the loan. To help lenders to know which loans will likely be deemed sound, Fannie Mae and Freddie Mac issue underwriting standards. Loans that meet these standards are deemed safe.

Community advocates argue that the underwriting standards issued by Fannie Mae and Freddie Mac have a chilling effect on lending in low-income and minority neighborhoods, because loans in these neighborhoods, even when they are basically sound loans, often do not meet these standards. As explained by Charles Hill, strict underwriting standards often serve to exclude minority borrowers who may have unstable job and credit histories.[113] Although both Fannie Mae and Freddie Mac maintain that their underwriting standards are merely guidelines and that they will accept mortgages that do not meet the standards if they appear to be "investment quality" (low-risk) mortgages, lenders have been hesitant to take that risk and either hold such loans in their own portfolios or refuse to make loans that do not meet the guidelines.[114]

Since the Chicago hearing, both Fannie Mae and Freddie Mac have taken steps to clarify their underwriting guidelines and educate lenders about their flexibility.[115] Recently, the Federal regulatory agencies' Interagency Task Force on Fair Lending indicated:

> [Fannie Mae and Freddie Mac's] guidelines allow considerable discretion on the part of the primary lender. In addition, the secondary market guidelines have in some cases been made more flexible, for example, with respect to factors such as stability of income (rather than stability of employment) and use of nontraditional ways of establishing good credit and ability to pay (e.g., use of past rent and utility payment records). . . . Fannie Mae and Freddie Mac not infrequently purchase mortgages exceeding the suggested ratios, and their guidelines contain detailed discussions of the compensating factors that can justify higher ratios . . .[116]

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110 Annette Fribourg, Vice President for Regulatory Activities, Fannie Mae, letter to Rosalind D. Gray, Acting General Counsel, U.S. Commission on Civil Rights, May 12, 1994 (hereafter Fribourg Correspondence); and Leland C. Brendsel, Chairman and Chief Executive Officer, Freddie Mac, letter to Rosalind D. Gray, Acting General Counsel, May 16, 1994 (hereafter Brendsel Correspondence).

111 Bradford, written statement submitted at *Chicago Hearing*, p. 9.

112 Glenn B. Canner and Stuart A. Gabriel, "Market Segmentation and Lender Specialization in the Primary and Secondary Mortgage Markets," paper presented at the Fannie Mae Annual Housing Conference, May 1992, pp. 22–23.

113 Hill Testimony, *Chicago Hearing*, vol. 1, p. 289.

114 ICF Incorporated, *The Secondary Market and Community Lending Through Lenders' Eyes*, Report Prepared for the Federal Home Loan Mortgage Corporation, Feb. 28, 1991, pp. 7–8.

115 Fribourg Correspondence; Brendsel Correspondence.

116 Interagency Task Force on Fair Lending, Policy Statement on Discrimination Lending, pp. 14–15.

Federal Housing Authority and Department of Veterans Affairs-Insured Mortgages

The Commission received testimony that two Federal programs designed to enhance access to credit, the mortgage loan guarantee programs operated by the Federal Housing Authority (FHA) of HUD[117] and by the Department of Veterans Affairs (VA),[118] have, in their implementation, had deleterious effects on minority neighborhoods. These charges were strongly disputed by the VA, which noted that similar charges had been made in a 1977 lawsuit[119] filed against the VA and found groundless by the court.[120] Assistant Secretary for HUD, Roberta Achtenberg, responded to these criticisms in a letter which outlined recent redesigns of HUD's enforcement efforts including the creation of the Office of Fair Housing and Equal Opportunity which has begun preparation of regulations on lending, property insurance and disparate impact.[121]

Dr. Bradford decried Federal regulators' tolerance of what he calls a "dual lending market" in which white borrowers have access to all sorts of loans, but low-income and minority borrowers are limited to FHA and Veterans Administration (VA) lending.[122] Elsewhere, Dr. Bradford's criticism has been pointed:

> To this day, the financial regulatory agencies systematically respond to the lack of lending by banks and thrifts in minority communities by asserting that these communities are served by FHA lending. This is strangely reminiscent of the old segregationist's argument that there was nothing wrong with segregated lunch counters as long as Blacks had a place to eat. These dual lending markets [are] not simply separate, they are unequal.[123]

Dr. Bradford explained that over the years FHA and VA lending have had a devastating effect on minority neighborhoods. Because they have very low required downpayments and liberal underwriting policies, FHA and VA loans are by their very nature high-risk loans, and they have high default and disclosure rates.

> When these loans are spread across the larger conventional market, the high foreclosure rates have little community effect. But when these foreclosures are concentrated in inner-city neighborhoods where the resale market is often slow, these homes become abandoned hulks and drug houses—soon stripped of their plumbing and basic systems.[124]

Although acknowledging that these loans "may initially create opportunities for minority individuals," Dr. Bradford testified that "this is done at a terrible cost to the communities where these loans are concentrated."[125] He continued:

> Many communities struggle to rebuild from the blight caused by the very federal agencies that were supposed to protect minority communities from discrimination

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117 12 U.S.C. § 1701 *et seq.*

118 38 U.S.C., ch. 37.

119 Jorman v. VA, 654 F. Supp. 748 (N.D. I11 1986), aff'd, 830 F 2d 1420 (7th Cir. 1987).

120 R.J. Vogel, Under Secretary for Benefits, Department of Veterans Affairs, letter to Rosalind D. Gray, Acting General Counsel, U.S. Commission on Civil Rights, June 7, 1994 (hereafter Vogel Correspondence).

121 Roberta Achtenberg, Assistant Secretary for Fair Housing and Equal Opportunity, letter to Rosalind D. Gray, Acting General Counsel, U.S. Commission on Civil Rights, May 24, 1994.

122 Bradford, written statement submitted at *Chicago Hearing*, p. 3.

123 Calvin Bradford, "Unmet Community Reinvestment Needs: A Problem of Attitude Adjustment," Statement before the Subcommittee on Consumer Credit and Insurance of the House Banking, Finance, and Urban Affairs Committee, Hearings on The Credit Crisis for American Consumers and Small Businesses, Jan. 27, 1993, pp. 39–40.

124 Bradford, written statement submitted at *Chicago Hearing*, p. 3.

125 Ibid.

and exploitation. It is ironic that millions of dollars of HUD funds are used by community groups to rehabilitate communities that were destroyed by HUD's FHA lending.[126]

The VA maintained to the Commission that its credit standards are very strict, and that it does not "put veterans into homes [they] cannot afford." Furthermore, the VA described the steps it takes to help veterans find alternatives to foreclosure when they are unable to make their mortgage payments, including intervening with the lending institution on behalf of the veterans and even taking over the loan itself.[127]

Although many of the FHA lending abuses cited by Dr. Bradford took place some time ago, he charged that HUD continues to fail in its duty to ensure that FHA lending does not destroy minority communities. He cited the continuing "infusion of poorly underwritten FHA loans in minority communities," which he has elsewhere attributed to HUD's limited monitoring of FHA lenders:

> For HUD's part, the monitoring of FHA lenders has become so limited that abuses are reappearing. Once again people are buying some homes with code violations and in need of major repairs. As a result some foreclosures are taking place in the first year of the loans—a clear sign of poor underwriting. The Direct Endorsement program[128] that has worked so well as an efficiency move in processing loans in the overall FHA market provides an opportunity for those exploiting racial change to operate with minimal HUD supervision or review.[129]

Furthermore, he said:

> HUD's property acquisition policies require all foreclosed properties to be conveyed to HUD vacant. In inner-city areas—where housing markets are slow, these foreclosed properties become abandoned. They are a major source of the deterioration of residential neighborhoods in minority communities.[130]

Finally, Dr. Bradford suggested that community development groups are experiencing roadblocks in their efforts to purchase and rehabilitate HUD-owned properties that might be due to HUD's hopes for congressional passage of the HOPE III program:

> Recently, it appears that part of the problem . . . may be that HUD actually has a vested interest in keeping the homes away from the community groups while it waits for Congress to fund the HOPE III program. This has raised questions about whether HUD is intentionally inflating the prices of these homes in order to use the Congressional funds to help bail out the FHA insurance fund.[131]

He explained that, under the HOPE III program, Congress would pay HUD the appraised values of these properties, which would then be rehabilitated for low-income residents. He added that HUD had recently hired a firm to appraise HUD's properties and that firm was systematically overappraising the properties.[132]

Commenting generally on Dr. Bradford's charges, the VA stated:

> The VA housing program makes it possible for veterans to obtain financing for a home on favorable terms and conditions. VA continues to be mystified by Dr. Bradford's apparent criticism that VA, by providing financing to minority veterans, somehow contributes to a diminution of fair housing. Throughout the almost

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126 Ibid., p. 4.

127 Vogel Correspondence, pp. 3–4.

128 12 U.S.C. §§1708-9 (1994).

129 Bradford, "Never Call Retreat," p. 12.

130 Bradford, written statement submitted at *Chicago Hearing*, p. 12.

131 Ibid., p. 13. On Oct. 28, 1992, Congress authorized expenditures of $195 million for fiscal year 1992. *See* 42 U.S.C.S. § 891 (1993).

132 Bradford, written statement submitted at *Chicago Hearing*, p. 13.

12-year history of the *Jorman* litigation, VA was unable to ascertain what action the individual plaintiffs, Dr. Bradford, or the other experts who testified for the plaintiffs believed VA could or should take in light of the fact that minority veterans were, in fact, obtaining VA loans. VA does not believe it can legally deny financing to minority veterans or dictate (based on the racial composition of the area or otherwise) where a veteran will purchase a home. . . .

VA is fully committed to administering all its programs, including the home loan program, in a fair and equal manner, and ensuring no veteran is denied the opportunity to fully participate in any VA program based upon race, color, religion, national origin, or sex. VA cannot and will not tolerate any discrimination in its programs. While we are very concerned about any allegation that our programs are not fairly administered, we and the court considered at length Dr. Bradford's theories, and found no basis for his allegations.[133]

133 Vogel Correspondence, pp. 1–2.

Chapter 3. Access to Credit and Technical Assistance for Minority-Owned Businesses

As suburbanization and the economic changes known as "industrial restructuring" increasingly draw manufacturing jobs away from Chicago's inner-city areas, the need for economic development strategies that produce jobs in the inner city becomes ever more imperative. A witness at the Chicago hearing testified that, while reducing the "spatial mismatch" between inner-city residents and jobs in large corporations is one such strategy, "another equally important strategy is to develop minority businesses. . . . [R]aising minority employment levels depends upon the creation of minority-owned businesses."[1]

A community developer in Chicago explained:

> What we really need to get good at doing in Chicago but also in other cities around the country where these pockets of poverty and deepening poverty exist is to really find ways to export product and import cash. . . . It's real simple, whatever that product is. It can be service. It can be labor. It can be hard goods.[2]

Yet witnesses at the Chicago hearing testified that certain implacable barriers are hindering the meaningful development of minority-owned businesses in that city. Foremost among these barriers appears to be a dearth of credit opportunities and technical assistance for minority-owned businesses and problems with Federal, as well as local, government affirmative action programs designed to promote minority business development.

Witnesses at the Chicago hearing agreed that lack of access to credit was an important impediment to minority business development. According to expert testimony:

> The availability of financial capital is one of the most important determinants of business formation and success. However, for minority entrepreneurs, the problem of inadequate access to financial capital is a major barrier. Historically, minority business owners have been closed out of private capital markets, while at the same time they have experienced difficulty securing needed capital from savings, or from family, friends, and associates.[3]

Minority businesses' difficulties in gaining access to capital stem both from discrimination in the credit market itself and from discrimination in other areas:

> Past and current discrimination against minority and especially African American entrepreneurs in capital markets has been well-documented. Studies of lending to small businesses have found that black business owners submitting loan applications, on average, have significantly lower success rates than other minority groups, even when controlling for credit risk. The cost of credit has also been found to be higher for black-owned firms. Black borrowers pay higher interest rates and receive loans with shorter maturity periods than do nonminorities.[4]

Discrimination in the labor market and unequal educational opportunities further reduce minority business owners' access to capital, especially at the point of starting a business:

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1 Lewis Testimony, *Chicago Hearing*, vol. 3, p. 131.

2 James F. Capraro, Executive Director, The Greater Southwest Development Corporation, testimony, *Chicago Hearing*, vol. 1, p. 372.

3 Lewis and Theodore, Supplemental Testimony, *Chicago Hearing*, p. 9.

4 Ibid.

In the earliest stages of a business' growth cycle, owners require seed capital to start and maintain the firm. At this stage, financial seed capital typically comes from the owner's personal savings, or from family friends and associates. However, discriminatory labor market practices and often poor educational opportunities available in predominantly minority neighborhoods have diminished the income-earning potential of minority entrepreneurs and their families. Because wealth accumulation levels in many minority communities are so low, personal assets are limited and therefore not available for investment.[5]

The head of the Hispanic American Construction Industry Association (HACIA) spoke of the experience of HACIA's members:

> It has been an all too real experience of our members that historically, our inability to access financial services and surety bonding has had a depressive effect on our business opportunities and therefore our growth. A small contractor may have the technical expertise, the equipment, the skilled labor, and the all-important competitive bid, but if he or she can't access into financial services and bonding, they are effectively cut out of any business opportunities.[6]

The personal experience of one of HACIA's members who, despite having run a business successfully for 8 years, could not obtain a line of credit to permit him to continue his business activities is illustrative:

> Recently I was eliminated from my banker's portfolio . . ., and I'm out there seeking . . . a new line of credit, and it's very difficult. I'm not having any luck. I've been in business for 8 years. Our company has been established doing roughly $3.2 million for the last 4 years. I have contracts on hand, and . . . I don't have a bank available to support my work force, in order to pay my suppliers. I'm just hanging on by thin strings, and I'm not the only one.[7]

Despite the demonstrable need to promote access to credit for small and minority-owned businesses in inner-city areas, according to witnesses, the Federal Government has not done enough to provide such credit opportunities. A survey of Latino business owners in Chicago, done by the Latino Institute, for instance, revealed that fewer than 1 percent of these owners found the Federal Government "helpful" in obtaining credit.[8] As discussed above, the enforcement of the Community Reinvestment Act (CRA), which requires banks to help meet the credit needs of their lending areas, has for the most part been limited to home mortgage lending. According to a community developer, who supports extending the disclosure requirements in the Home Mortgage Disclosure Act to banks' small business lending:

> [w]e have a very tough time talking to the regulators and examiners about commercial lending. What they look at is home lending, home mortgage lending. . . . Now, I'm hoping that with the new small business lending disclosure that we'll have something new to measure and the regulators will then learn the value of economic development banking in a local neighborhood, but for the last 10 years, the only thing that's been measured is home lending, so the only thing that's really pushed from a CRA point of view by the examiners is home lending, and small business lending has really fallen by the wayside.[9]

Witnesses suggested that government use loan guarantees and revolving loan funds to help enhance credit opportunities for minority-owned businesses.[10]

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5 Ibid.

6 Carlos Ponce, Executive Director, Hispanic American Construction Industry Association, testimony, *Chicago Hearing*, vol. 1, p. 396.

7 David Ramirez, Vice President of DR/Balti Contracting Company, private contractor, testimony, *Chicago Hearing*, vol. 1, pp. 397–98.

8 Rivera, written statement submitted at *Chicago Hearing*, p. 6.

9 Capraro Testimony, *Chicago Hearing*, vol. 1, p. 418. *See also* Pope Testimony, *Chicago Hearing*, vol. 1, pp. 392–93.

10 Lewis and Theodore, Supplemental Testimony, *Chicago Hearing*, p. 11.

Several witnesses indicated that more is needed than just providing minority businesses with access to credit, however. One witness commented, "[G]etting a loan, even though it may be a major struggle, is still only half the battle. . . . Going on to become a successful business is really the victory that everybody is looking at."[11] Beyond credit, access to technical training is another essential ingredient in minority businesses success. According to witnesses:

> Limited human capital attributes hamper business formation and development efforts among many minority entrepreneurs at all stages of the business life cycle. At the earliest stages of firm growth, business owners experience difficulty in preparing marketing, business, and financial plans. During the growth stages, securing capital and repaying debt become the primary difficulties facing a firm. Finally, when the firm matures, expansion may place strains on management expertise.[12]

However, according to the head of a black business association in Chicago, the Federal Government has been lacking in this area as well:

> We are dismayed by a seemingly growing lack of concern for technical assistance for minority-owned businesses. At the Federal and State levels especially, as well as from the private sector, we are seeing less and less support for programs which train and counsel minority-owned businesses on entrepreneurial excellence.[13]

As an example, she noted that the Minority Business Development Agency (MBDA), the chief Federal Government agency responsible for providing technical assistance to minority businesses, is underfunded relative to the need.

> The Minority Business Development Agency has never really received enough money to do its job. In Illinois, we went from 57 small business centers to 16, from 10 to 4 in Chicago.[14] We are all expected to do much more with much less. To me, this reflects a complete lack of commitment to the basic economic needs of my community.[15]

David Vega, Regional Director of the MBDA, testified about some new programs his agency is undertaking to help minority businesses. He stated that the MBDA is making efforts, in conjunction with other Federal agencies, the International Franchise Association, and Women in Franchising, to create new opportunities for minorities in franchising. He noted that minority businesses currently make up a very small percentage of franchisees, and that the franchise business is one of the most rapidly expanding sectors in the retail industry.[16] Furthermore, Mr. Vega testified that the MBDA was planning to open a Minority Enterprise Growth Assistance (MEGA) Center in Chicago which would be funded at approximately $2.5 million and would provide supportive services that its regular business development centers could not provide, such as assistance in the areas of international trade, franchising, communications, construction, and surety bonding.[17] He acknowledged, however, that the assistance MBDA is providing "is still not enough. There is a lot of assistance that is required. We could probably have our centers work 24 hours a day and still not meet the need."[18]

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11 Wysocki Testimony, *Chicago Hearing*, vol. 1, p. 386.

12 Lewis and Theodore, Supplemental Testimony, *Chicago Hearing*, p. 12.

13 Pope Testimony, *Chicago Hearing*, vol. 1, p. 393.

14 Small business centers are operated by the Small Business Administration and not the MBDA.

15 Pope Testimony, *Chicago Hearing*, vol. 1, p. 394.

16 David Vega, Regional Director, Minority Business Development Agency, testimony, *Chicago Hearing*, vol. 1, pp. 402–03.

17 Ibid., pp. 405–06.

18 Ibid., p. 406.

Ted Wysocki, head of the Chicago Association of Neighborhood Development Organizations (CANDO), testified that some positive developments were taking place in Chicago. The first of these was a linked-deposit program carried out by the city and State treasurers. The linked-deposit program gives banks incentives to make loans to minority businesses. According to Wysocki, "[i]n its first year of operation, the City Treasurer linked-deposit program with six participating banks resulted in over 100 loans with 45 percent to minority business owners, 13 percent to woman-owned businesses, and 25 percent to emerging businesses less than three years old."[19] He also noted that CANDO has started a business mentoring program through which fledgling businesses could seek the advice and draw upon the expertise of more established businesses. Finally, he testified that CANDO was attempting to become a lender to provide microloans (loans of $10,000 or less) to help very small businesses get started.[20]

Affirmative Action in Minority Contracting

The chief means by which most governments seek to promote minority business development is through affirmative action in government contracting, through set-asides or goals for minority business participation in contracts. The importance of set-asides and other government affirmative action programs as a means of attracting minority entrepreneurs into business sectors with potential for economic development for minority communities was emphasized by witnesses:

> Minority-owned businesses are heavily concentrated in industry sectors characterized by below-average wages, low profit margins, and poor growth prospects. Nearly 70 percent of minority-owned firms operate in the retail trade and personal services industry sectors. This concentration in two industry sectors greatly diminishes the potential economic development impacts of the minority business sector. . . . To increase the economic development impacts attributable to the minority business sector, entrepreneurs must be encouraged to enter the emerging lines of minority enterprise, such as manufacturing and construction, which allow minority entrepreneurs to access new markets and invest in industries which hold the promise of supplying greater employment opportunities to minority communities.[21]

Witnesses at the hearing were critical of government implementations of these programs, however, which most said were not living up to their promise.

Mayor Daley touted Chicago's minority business set-aside Minority Business Enterprise/Women Business Enterprise (MBE/WBE) ordinance as a model ordinance for the Nation:

> The city of Chicago has set the national standard for minority business participation in government. Chicago has crafted an ordinance that met the standards established by the Supreme Court in the controversial 1989 [*Croson*] decision[22] that struck down many set-aside programs around the country. Our program guarantees that 25 percent of the dollar value of all city contracts and purchases over $10,000 go to minority-owned business, and 5 percent go to women-owned businesses, for a total of 30 percent.
>
> And every year of my administration we have exceeded our own guidelines. In the last 2 years, the figure was between 33 and 40 percent. . . .
>
> The Federal Government should consider using Chicago's set-aside ordinance as a model for Federal construction projects around the country, such as the new post office, which you see west of here, about five blocks, at Harrison and Canal. . . .[23]

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19 Wysocki, written statement submitted at *Chicago Hearing*, p. 3.

20 Ibid.

21 Lewis and Theodore, Supplemental Testimony, *Chicago Hearing*, pp. 12–13.

22 J.A. Croson Co. v. City of Richmond, 488 U.S. 469 (1989).

23 The Hon. Richard M. Daley, opening remarks, *Chicago Hearing*, vol. 1, pp. 22–23.

TABLE 3.1
City of Chicago's Minority Business Enterprise/Women's Business Enterprise Awards, 1993 (Millions of Dollars)

	All awards		Construction		Nonconstruction	
Black	$100.7	(12%)	$13.7	(9%)	$87.1	(13%)
Hispanic	$71.4	(8%)	$22.4	(14%)	$51.7	(7%)
Asian	$28.1	(4%)	$9.5	(6%)	$18.2	(3%)
Women (nonminority)	$44.4	(5%)	$5.4	(4%)	$39.0	(6%)

Source: Rosanna A. Marquez, Director of Programs, Office of the Mayor, City of Chicago, letter to Rosalind D. Gray, Acting General Counsel, U.S. Commission on Civil Rights, May 23, 1994, Attachment B.

Another witness, however, disputed the mayor's contention that the city regularly meets its guidelines:

> Any major development project occurring in the city of Chicago must have 25 percent minority business participation plus a 5 percent women-owned business participation. Yet that requirement is rarely fulfilled. Most minority and women-owned construction companies are shut out of this billion-dollar industry due to limited technical expertise in the trades and difficulties in meeting capital requirements.[24]

The city of Chicago's MBE/WBE ordinance and its regulations govern certification of minority and women-owned businesses. Redevelopment agreements between the city of Chicago and developers incorporate the minority set-aside ordinance.[25] The office also provided the Commission with data on the city's contracts for the calendar year 1993. According to these data, out of $864.9 billion in city contracts awarded in 1993, minority-owned businesses were awarded contracts in the amount of $213.2 billion, or 25 percent of the total, and women-owned businesses were awarded contracts in the amount of $62.7 billion, or 7 percent of the total. Thus, in 1993 at least, the city achieved its affirmative action goals.[26] Table 3.1 illustrates the breakdown of the city's contracts with minority and women-owned companies by ethnicity, separately for construction and nonconstruction contracts. These data indicate that blacks and women receive a lower share of construction contracts than of nonconstruction contracts, whereas the opposite is true for Hispanics and Asians. The mayor's office further indicated that the city encourages minority and women-owned businesses to enter into partnerships with developers to overcome any disadvantages in capital and technical expertise.[27]

One witness explained that the Supreme Court's 1989 *Croson* decision, which specified that localities could legally implement affirmative

24 Wysocki, written statement submitted at *Chicago Hearing*, p. 4.

25 Rosanna A. Marquez, Director of Programs, Office of the Mayor, City of Chicago, letter to Rosalind D. Gray, Acting General Counsel, U.S. Commission on Civil Rights, May 23, 1994, p. 2 (hereafter Marquez Letter).

See also the Minority and Female Business Enterprise Act, Ill. Ann. Stat. ch. 30, § 575/2 et. seq. (Smith-Hurd Supp. 1994); Ill. Ann. Stat. ch. 775, § 5/2-105 (Smith-Hurd Supp. 1994) (affirmative action in public contracts).

26 Marquez letter, attachment B.

27 Ibid., p. 2.

action plans only when they could demonstrate a history of discrimination against minority businesses by the implementing entity, had a chilling effect on local governments' affirmative action programs:

> The Supreme Court's *Croson* decision did not create an environment of racism. It did, however, knock the underpinnings out from under our wobbly attempts to achieve economic parity. It also gave permission to those who suddenly resisted doing business in a fair and equitable manner, the permission not to be so subtle any more.[28]

While praising the efforts by a Chicago real estate developer, Stein and Company, which built the Federal Metcalfe building—the building in which the Chicago hearing was held—under a contract with the General Services Administration (GSA), witnesses were generally critical of Federal Government affirmative action programs.

According to its president, Julia M. Stasch, Stein and Company, in the early to mid-1980s, made a philosophical decision that it did not just want to be involved in building structures, but that it also wanted to invest in Chicago and to promote minority business development in that city. Since that time, the company has developed increasingly complex affirmative action initiatives for each of its projects.[29] When GSA decided to make the building of the Metcalfe Federal Building in downtown Chicago a "hallmark of opportunity for participation" by small, minority, and women-owned businesses, and, in an unusual move, chose to select a developer based in part on its affirmative action proposal, Stein and Company bid on and won the GSA contract.[30] Ms. Stasch said that it was highly unusual for GSA to make minority contracting a priority, and they only did so in Chicago under congressional pressure. She noted that in her company's bid to construct the new Internal Revenue Service headquarters in Prince Georges County, Maryland, she could discern no such priority.[31]

Stein and Company used several techniques for increasing minority participation in the Metcalfe project. From the beginning, and throughout the project, they made clear to their general contractor, and through the general contractor, to all the prime subcontractors, that affirmative action was a high priority on the project. Stein and Company targeted contracts in several trades to be bid exclusively by minority firms. The company broke up several contracts into three smaller subcontracts to allow minority firms with limited bonding capacity to participate in the contracts. They worked with many of the subcontractors involved in the project to find creative ways to encourage them to use minority firms. They stepped in several times to get the construction lender to help small firms overcome cash flow problems they were experiencing. They encouraged joint ventures and mentoring relationships between majority and minority firms. Finally, they set up a strict review process to ensure that minority contractors were legitimate and that they performed significant work on the project.[32] Throughout, Stein and Company was concerned that the minority contractors used on the Metcalfe project would be given work sufficient to build their future capacity to perform larger contracts.[33]

With respect to this company, one witness said, "Stein and Company . . . not only met their

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28 Pope Testimony, *Chicago Hearing*, vol. 1, p. 394.

29 Julia M. Stasch, President, Stein and Company, telephone interview by Nadja Zalokar, May 7, 1992 (hereafter Stasch interview).

30 Stein and Company Federal Center, Inc., *Final Report*, Subcontracting and Affirmative Action Activities for the Ralph H. Metcalfe Federal Building, General Services Administration, Chicago, Illinois, Contract No. GS-05B-14850, Mar. 1, 1992, p. 3-1.

31 Stasch interview.

32 Stein and Company Report, pp. 5-1—5-5, 7-2.

33 Stasch interview, and Stein and Company Report, p. 4-1.

affirmative action goals for the Metcalfe Building, but they exceeded them."[34] The witness was critical of the Federal Government, however:

> What tends to happen, though, is that the GSA will not set any true benchmark goals. For example, I believe they're in the process right now of renovating the offices for the IRS and the U.S. Drug Enforcement Agency, and they have no clearcut goals of what the minority participation is going to be. . . . What we see is a variety of different Federal agencies in different programs and Federal dollars are involved, some of which there are goals, and some of which there are none.[35]

GSA responded to an inquiry from the U.S. Commission on Civil Rights' Office of General Counsel concerning whether GSA set benchmark goals for minority and disadvantaged business participation in its construction projects. GSA stated that it had established an agencywide goal of 36 percent of all dollars for prime contract awards to be made to small business concerns, 2.5 percent for prime contract awards to small disadvantaged business concerns, 3.2 percent to Section 8(a) awards, 37 percent for subcontracts to be awarded by prime contractors to small business concerns, and 5.5 percent for subcontractors to be awarded by prime contractors to small disadvantaged business concerns.[36]

Another witness added:

> We are dealing right now with the upcoming U.S. Postal Service project, and our biggest concern initially was a 10 percent goal which was defined so nebulously that, in fact, no minority would have to be on that project, and it would still be met. That has been changed, but that's been changed because of pressure, because we talked to our congressional representatives and we had meetings, and the meetings continue to go on. . . . Most public agencies, not all, in this region send us copies of plans and specs of all projects that are coming up. We had a tough time getting the attention of the U.S. Postal Service on that particular project. We just now got on the list to receive those documents.[37]

The United States Postal Service indicated that it uses a "best effort" approach to minority contracting, rather than formal numerical goals, because it has found that this approach has worked for them. It added, however, that its minority contracting program is currently under review. Furthermore, the Postal Service requires prime contractors to submit goals for subcontracting with minority and other disadvantaged businesses, which become a legally enforceable part of the contract.[38]

A Hispanic contractor suggested that one problem with Federal Government contracts is that they are generally too large for most minority contractors to bid on.

> What we would like is the agency such as the GSA and the Department of Defense and other governmental agencies to give the opportunity to minority contractors for more jobs that are available under the high dollar volumes that they like to get bids at. They let the bids out at 10 million plus. Now, how many minority companies can bid on projects of that magnitude?[39]

Other witnesses also supported the debundling of government contracting as a means of enhancing business opportunities for minority-owned businesses.[40] Mr. Wysocki told about CANDO's efforts to form a consortium of minority contractors to

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34 Ponce Testimony, *Chicago Hearing*, vol. 1, p. 425.

35 Ibid., pp. 425–26.

36 Allie B. Latimer, Special Counsel for Ethics and Civil Rights, General Services Administration Office of Ethics and Civil Rights, letter to Rosalind D. Gray, Acting General Counsel, U.S. Commission on Civil Rights, July 15, 1994.

37 Pope Testimony, *Chicago Hearing*, vol. 1, pp. 424–25.

38 Marvin Runyon, Postmaster General, CEO, United States Postal Service, letter to Rosalind D. Gray, Acting General Counsel, U.S. Commission on Civil Rights, May 13, 1994.

39 Ramirez Testimony, *Chicago Hearing*, vol. 1, p. 427.

40 Lewis and Theodore, Supplemental Testimony, *Chicago Hearing*, p. 14.

allow minority contractors to bid on larger contracts. He explained:

> The consortium would act as a general contractor in the way manufacturing networks do in identifying sales opportunities. Then, for instance, two or three electrical tradespersons could bid as a single subcontractor.[41]

He continued:

> Banks will be recruited to receive linked deposits from the City and State Treasurer for providing lines of credit to subcontractors or tradespersons awarded contracts through the consortium. The participating banks would then treat contracts as receivables and place liens so they can collect the revenue to repay the credit they extended.[42]

Mr. Wysocki warned, however, that "these efforts would be jeopardized if regulators classify such loans [as risky]."[43]

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41 Wysocki, written statement submitted at *Chicago Hearing*, p. 4.

42 Ibid.

43 Ibid., p. 5.

Part II. Minority Access to Public Services

Equal access to public services is a prerequisite for a strong social fabric and a fundamental civil right that should be enjoyed by all Americans. Those who need, but are denied, public services have even more restricted opportunities to enhance their well-being. Furthermore, they develop a perception that government services are distributed unfairly, on the basis of race, ethnicity, wealth, or political power.

Witnesses at the Chicago hearing spoke about minority access to public services in Chicago, pointing to their unequal distribution as an underlying cause of racial and ethnic tensions in the city. Based on a survey of black and white Chicago-area residents, researcher Garth Taylor testified that "concern about fairness and dissatisfaction with services and rewards is substantially higher among blacks than whites at every income level and socioeconomic category. At present in Chicago, the government is a particular focus of concern about due process and fairness of service delivery."[1] Saying that "[a]lmost three-quarters of the black adult population in Chicago agree with the statement, 'Government officials usually pay less attention to a request from a black person than from a white person',"[2] Taylor concluded:

> Suspicion and mistrust about fairness in society manifests itself in the street-level view that there is a conspiracy by government to provide fewer resources and more expensive, lower-quality services to the black population. This view constitutes, in the language of social theorists, an "injustice frame of reference" that justifies aggression and hostility in situations of contested contact.[3]

As the diversity of Chicago has increased, similar feelings of unfairness have emerged in the Hispanic population. Over the decade of the 1980s, Chicago's Hispanic population grew by 28.9 percent, (from 423,357 to 545,852), while its black and white populations shrank. In 1990 Latinos constituted 20 percent of the city's population, up from 14 percent in 1980.[4] As a result of these demographic changes, the provision of public services to Hispanics has become an increasingly urgent issue in the city. Migdalia Rivera, director of Latino Institute, a not-for-profit research and advocacy agency focusing on Chicago's Hispanics, stated:

> Of course, the presence of so many more Latino Chicagoans has necessitated an increased need for sharing of public and private resources, be it in education, employment, housing, or the economic development arena. Although ideally this sharing would occur in the normal course of events, it has clearly not occurred. Latinos have yet to receive an "equitable" share in *any* of these areas.[5]

Another witness testified:

> The discrimination felt by many Latinos has another component, . . . [an] element that can best be described as the word, "indifference." Large bureaucracies are sometimes guilty of this charge when they fail to plan

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1 D. Garth Taylor, Executive Director, Metro Chicago Information Center, written statement submitted at *Chicago Hearing*, p. 7.

2 Ibid., p. 8.

3 Ibid.

4 U.S. Bureau of the Census, *Census of Population and Housing, 1990: P.L. 94–71 Data for Illinois*. 1980 data: Bureau of the Census Summary File 4A, table 13.

5 Migdalia Rivera, written statement submitted at *Chicago Hearing*, p. 3.

globally in order to serve a multiethnic, multiracial community. Many Latinos feel alienated from the society, because they perceive the institutions that they support with their own taxes as being indifferent, if not hostile, to their needs.[6]

In contrast to the situation in the District of Columbia, which the Commission examined in an earlier hearing,[7] the city and county of Chicago have undertaken efforts to provide access to services to the city's limited-English speaking populations. Nevertheless, unequal access to public services remains a critical problem in Chicago.

Housing, health care, education, and employment training programs are some of the public services that give rise to concerns about equal access. The diversity of the government work force is critical in providing employment as well as access to other public services.

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6 Hipolito Roldan, President, Hispanic Housing Development Corporation, testimony, *Chicago Hearing*, vol. 1, p. 110.

7 *See* U.S. Commission on Civil Rights, *Racial and Ethnic Tensions in American Communities: Poverty, Inequality, and Discrimination—Volume I: The Mount Pleasant Report* (Washington, D.C.: GPO, January 1993).

Chapter 4. Minority Access to Housing

With Chicago's long history of residential segregation, governmental programs can play an important role in promoting or overcoming segregation. Part 1, chapter 1 of this report described the failures of government programs to guarantee that the same credit opportunities are available to minorities seeking home mortgages as to whites. This chapter describes government programs that provide affordable housing to minorities through the provision of public housing and the enforcement of housing nondiscrimination laws.

Community representatives at the Chicago hearing were concerned about two primary aspects of the city's provision of public housing. First, public housing had long been used as a mechanism for segregating African Americans from white communities. Second, other minority groups, particularly Latinos, seldom use public housing because such programs have been so closely associated with the African American population. Chicago's history of resistance to the integration of public housing and the 1976 landmark Supreme Court decision on housing discrimination in *Hills v. Gautreaux*[1] set the stage for these concerns.

A Historical Background on Public Housing in Chicago

Chicago's Resistance to Integration of Public Housing

Chicago and its suburbs have been severely residentially segregated for blacks since the great migration to the city during World War I.[2] Serious housing shortages that hit low-income families particularly hard began in Chicago as early as the late 1920s, because of the large influx of people into Chicago during and after World War I. During this period, there was a large migration of blacks into Chicago as they left the agrarian South for cities in the north. The vast majority of them settled in the "black belt" of the south side of the city.[3]

During the 1930s, the Depression forced more families into poverty, further limiting their ability to find decent and affordable housing. City government efforts to alleviate the problem were unsuccessful. The Federal Government created the Housing Division of the Public Works Administration (PWA) to address the nationwide need for public housing. PWA began supervising the construction of public housing and built the first three projects in Chicago during the mid-1930s.[4] In 1937 the Federal Housing Act was passed, creating a public housing program to provide low-income families with decent, safe, and sanitary housing.[5] That same year, the Chicago Housing Authority (CHA) was incorporated to provide public housing for Chicago.

The years during and after World War II further strained the already minimal housing supply in Chicago. As the war broke out, workers gravitated to the Nation's steel and industrial center, but new public housing was built only for those directly involved in the war effort. The city's black population also increased during the war years, for example, from 8 to 13.5 percent of the total population between 1940 and 1950. After the war,

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1 425 U.S. 284 (1976).

2 Gary Orfield and Ken Gaebler, *Residential Segregation and the 1990 Census*, Chicago Urban League and Leadership Council For Metropolitan Open Communities, Apr. 10, 1991, p. 1 (hereafter *Residential Segregation*).

3 Devereux Bowly, Jr., *The Poorhouse: Subsidized Housing in Chicago, 1895–1976* (1978), p. 17 (hereafter *The Poorhouse*).

4 *The Poorhouse*.

5 88 Stat. 653 (codified as amended at 42 U.S.C. § 1437 et seq. (1988)).

tens of thousands of veterans returned home seeking housing.[6] In response to these demands for housing, CHA authorized the construction of additional public housing projects—mostly low-rise buildings.

The reformers who led CHA during this period, such as Chairman Robert Taylor, tried to integrate some of the public housing. These efforts were strongly opposed by the whites in the projects and some city officials. In a December 1946 incident, CHA moved several black families into a public housing project in a white neighborhood. When the whites in the project learned of their arrival, a riot ensued. Over 1,000 whites surrounded the area shouting insults and throwing bricks. Four hundred police officers were called in to restore order.[7]

Modest attempts to integrate public housing soon ended with the 1947 election of a mayor who was not a strong supporter of either racial integration or public housing. The aldermen on the city council were increasingly hostile toward CHA because it could integrate their own neighborhoods. White hostility to black integration increased after the 1948 Supreme Court decision in *Shelly v. Kraemer,*[8] which essentially made racially restrictive covenants unenforceable. In 1948 a State law was passed, at the insistence of the city council, giving aldermen veto power over site selection by CHA.[9] The council thus had a way to ensure that public housing projects intended for black families were placed in existing black ghettos.

Between 1949 and 1950 the city council struggled over the location of proposed public housing for blacks. Robert Taylor of CHA presented his site proposals to the mayor and the city council. The city council rejected them, in part, because some of the sites were in white neighborhoods. The majority of the proposed public housing projects for blacks were again located in existing black neighborhoods. Chairman Taylor resigned from CHA in November 1950.

The majority of the public housing projects built in the 1950s and early 1960s were highrises.[10] Highrise apartments were cheaper to build and did not require as much valuable land.[11] At the Commission's hearing, Vincent Lane, current Chairman of CHA, characterized the planning of public housing during this era as "atrocious."[12] He testified that the city had built expressways right through the minority communities causing significant displacement. The use of highrise public housing was not disbursed throughout the city. This is exemplified by the State Street corridor which is the highest concentration of public housing in the world, according to Chairman Lane.[13]

During the 1950s and 1960s, the civil rights movement attracted the attention of the Nation in its struggle for equal rights. In Chicago, civil rights leaders criticized CHA for placing highrise public housing projects primarily in black neighborhoods. Business and civic groups promised to support open and fair housing in a "Summit Agreement" reached on August 26, 1966, only after a long summer of protest marches, meetings, and other activities led by Dr. Martin Luther King, Jr. As part of the agreement, CHA agreed to "seek scattered sites for public housing and . . . limit the height of new public housing structures

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6 *The Poorhouse*, p. 56.

7 Nicolas Lehman, *The Promised Land: The Great Black Migration and How it Changed America* (1991), p. 71 (hereafter *The Promised Land*).

8 334 U.S. 1 (1948).

9 Martin Meyerson and Edward C. Banfield, *Politics, Planning and the Public Interest: The Case of Public Housing in Chicago* (1955), pp. 136–37.

10 *The Poorhouse*, pp. 111–12.

11 *The Promised Land*, p. 92.

12 Lane Testimony, *Chicago Hearing*, vol. 1, pp. 323–24.

13 Ibid.

in high density areas to eight stories, with housing for families with children to the first two stories. Whenever possible, smaller units will be built."[14] The Summit Agreement did not, however, specifically encourage the placement of new public housing in white neighborhoods.

In August 1966 the landmark housing discrimination case of *Gautreaux v. Chicago Housing Authority*[15] was brought against CHA and HUD. The suit eventually forced CHA to desegregate its public housing and initiate a scattered-site housing plan to end housing discrimination.

During the 1970s and 1980s CHA was absorbed with the *Gautreaux* lawsuit, its aftermath and charges of CHA's gross mismanagement. CHA acknowledged the problems in its own 1988 annual report. A HUD-threatened takeover in 1987 was averted after HUD and CHA reached an agreement whereby CHA agreed to turnover day-to-day management to a new HUD-approved oversight team.

During the 1980s Chicago's public housing system came under severe criticism for the crime, poverty, despair, and decay endemic in its high-rise buildings. The Illinois State Advisory Committee to the Commission on Civil Rights sponsored a consultation examining the serious problems facing the public housing system in Chicago.[16] Groups such as the Chicago Urban League called for the dismantling of the highrises and a transition to smaller, citywide public housing units to provide more employment, housing, and educational opportunities for Chicago's low-income families.[17]

The problems of residential segregation in metropolitan Chicago continue today. A comparative study by the *Miami Herald,* of the 50 largest metropolitan areas in 1990, measured the proportion of all the blacks in metropolitan areas who live in segregated areas that have 90–100 percent black residents. In Chicago, 71 percent of all blacks lived in such areas. This was the highest percentage among the 50 largest metropolitan areas.[18] A 1991 study of segregation in metropolitan Chicago revealed: (1) blacks in the city remain extremely segregated and there has been little change since 1980; (2) blacks in the suburbs have increased rapidly and their segregation level is down considerably; and (3) Latinos in Chicago[19] are highly segregated from whites and there was no overall improvement in the 1980s.[20]

The Gautreaux Lawsuit

In 1976 the Supreme Court's decision in *Hills v. Gautreaux*[21] represented the culmination of 10 years of litigation to end the unconstitutional segregation of public housing in Chicago.

The situation began in early 1965, when CHA proposed the construction of nine new public housing projects. Because several aldermen had objected to sites that included white neighborhoods, CHA designated inner-city ghettos for the majority of these sites. The Chicago Urban League and other civil rights groups protested the decision to the Public Housing Administration (PHA),[22]

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14 The "Summit Agreement" (Chicago: Leadership Council for Metropolitan Open Communities, Aug. 25, 1966), par. 3.

15 296 F. Supp. 907 (N.D. Ill. 1969).

16 *Housing: Chicago Style, A Consultation*, Illinois Advisory Committee to the U.S. Commission on Civil Rights (October 1982).

17 "Chicago's Public Housing Crisis: Causes and Solutions," The Chicago Urban League (1988).

18 *Residential Segregation*, p. 1 (citing *Miami Herald* study, Apr. 9, 1991).

19 The greatest growth of population during the 1980s was in the Latino community.

20 *Residential Segregation*, p. 1.

21 425 U.S. 284 (1976).

22 Public Housing Administration (PHA) was created in 1937 to provide Federal funding to local housing authorities.

charging that the location of the sites would violate title VI of the Civil Rights Act of 1964.[23] PHA responded by stating that the Housing Act of 1937 "vests in local authorities the maximum amount of responsibility in the administration of the program, including responsibility for selecting sites."[24]

On August 9, 1966, at the civil rights groups' urging, the Illinois division of the American Civil Liberties Union (ACLU) brought separate class action suits against CHA and HUD in Federal court on behalf of six black tenants in, or applicants for, public housing in Chicago and other blacks similarly situated.[25] The complaint alleged that between 1950 and 1965 CHA had deliberately chosen public housing sites to avoid placing black families in predominantly white neighborhoods in violation of the equal protection and due process guarantees of the 14th amendment[26] and title VI of the Civil Rights Act of 1964.[27] The companion suit filed against HUD, CHA's funding agency, alleged that HUD violated the fifth amendment[28] by approving financial assistance and other support for CHA's discriminatory public housing practices.[29]

In February 1969 the trial court held that CHA's own documents and testimony demonstrated that it had intentionally selected public housing sites and "steered" tenants in a discriminatory manner in violation of the equal protection clause of the 14th amendment.[30] The court found that CHA had racially segregated the public housing system. Apart from four segregated white projects, CHA's family housing tenants were 99 percent black. Furthermore, exclusive of the four white projects, 99.5 percent of CHA's units for families were located in neighborhoods that were between 50 and 100 percent black.[31] The judge added that "[n]o criterion, other than race, [could] plausibly explain" the location of CHA's housing projects.[32]

The plaintiffs argued that the court should identify the primarily white and primarily black areas of Chicago and order CHA to build new public housing in both areas following a three to one ratio: three units in a white neighborhood for every unit in a black neighborhood. After a 4-month debate, Judge Austin adopted the plaintiffs' remedial scheme. He ordered CHA to build its next 700 family units in primarily white neighborhoods and afterward to place at least 75 percent of its new public housing units in white areas of Chicago or Cook County.[33] CHA was also ordered to modify its "tenant-assignment policy

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23 Pub. L. No. 88–352 (codified at 42 U.S.C. § 2000d et seq.). Title VI of the act provides that programs receiving Federal financial assistance cannot discriminate on the basis of race, color, or national origin.

24 Marie McGuire, Commissioner, U.S. Public Housing Administration, letter to Reverend Hall and Reverend Mallete, West Side Federation (Oct. 14, 1965).

25 Gautreaux v. Chicago Hous. Auth., CA No. 66 C 1459 (N.D. Ill. filed Aug. 9, 1966) (hereafter Gautreaux I); Gautreaux v. United States Dep't of Hous. & Urban Dev., CA No. 66 C 1460 (N.D. Ill. filed Aug. 9, 1966) (hereafter Gautreaux II).

26 U.S. Const. amend. XIV, § 1. The 14th amendment provides that no State shall deprive any person of life, liberty or property without due process of law. The plaintiffs charged that they were being denied the right to live in public housing outside of black neighborhoods.

27 Complaint at 11, 16, Gautreaux I.

28 U.S. Const. amend. V. The fifth amendment prohibits the deprivation of life, liberty or property without due process of law.

29 Complaint, Gautreaux II.

30 Gautreaux v. Chicago Hous. Auth., 296 F. Supp. 907, 909, 914 (N.D. Ill. 1969).

31 *Id. at 910.*

32 *Id.* at 912.

33 Gautreaux v. Chicago Hous. Auth., 304 F. Supp. 736, 738-739 (N.D. Ill. 1969) (housing would be provided in the suburbs on a voluntary basis), *aff'd.* 436 F.2d 306 (7th Cir. 1970), *cert. denied.* 402 U.S. 922 (1971).

and practices as will assist in achieving the purposes of this judgment order" and increase the supply of units as quickly as possible.[34]

After disposition of the CHA suit, the district court considered the action against HUD. Although in 1970 the court dismissed the complaint for lack of jurisdiction and failure to state a claim upon which relief could be granted,[35] the seventh circuit court of appeals reversed the decision. On remand, the district court consolidated the CHA and HUD cases and solicited the views of the parties to remedy the effects of the discriminatory site selection. A debate arose over whether relief should be limited to the boundaries of the city or include the entire metropolitan area. The case then worked its way[36] to the Supreme Court in the aftermath of the Supreme Court's decision on *Milliken v. Bradley*,[37] which had rejected a metropolitan area remedy.[38]

Finally, in a landmark 8-0 decision, the Supreme Court upheld the metropolitan remedy against HUD.[39] The Court held that "for purposes of the respondent's housing options" the "relevant geographic area . . . is the Chicago housing market, not the Chicago city limits."[40] The decision also noted that a metropolitan area remedy would not coerce "uninvolved governmental units" because "both CHA and HUD have the authority to operate outside the Chicago city limits."[41] The Court distinguished *Milliken*, finding HUD's discriminatory practices unconstitutional.[42]

After the Supreme Court decision, HUD and the plaintiffs reached agreement on a design to end further litigation on the issue. In June 1976 a written agreement was reached that created two remedial *Gautreaux* programs: (1) a "Section 8" rental subsidy program,[43] and (2) scattered site public housing.[44] The agreement formed the basis for a consent decree that expanded the original agreement.[45]

Gautreaux Remedy 1: Rental Subsidies

The section 8 program relies on private home and apartment owners who voluntarily participate in the program. Eligible "Gautreaux families" pay 30 percent of their adjusted gross income for rent, and HUD pays the remainder. The families are eligible for subsidized housing throughout the Chicago metropolitan area. The agreement provided that HUD would fund the Leadership Council for Metropolitan Open Communities[46] to provide counseling and assistance to Gautreaux families seeking housing through the section 8 program.

One advantage of the section 8 program is that the housing already exists and does not have to be built or maintained by CHA. Also, the program lacks the stigma of neighborhood public housing,

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34 304 F. Supp. at 739-741.

35 *Gautreaux II*, slip op. (N.D. Ill. Sept. 1, 1970), rev'd sub nom. Gautreaux v. Romney, 448 F.2d 731 (7th Cir. 1971).

36 Gautreaux v. Romney, 363 F.Supp 690, 691 (N.D. Ill. 1973), rev'd sub nom. Gautreaux v. Chicago Hous. Auth., 503 F.2d 930, 939 (7th Cir. 1974), aff'd sub nom. Hills v. Gautreaux, 425 U.S. 284 (1976).

37 418 U.S. 717 (1974).

38 *Milliken* required the consolidation of 54 school districts in Detroit to remedy racial segregation in the public schools.

39 Hills v. Gautreaux, 425 U.S. 284 (1976).

40 *Id., at 299.*

41 *Id.* at 298.

42 *Id.* at 297.

43 42 U.S.C. § 1437f (1988).

44 Robert R. Elliot, then General Counsel of HUD, letter to Alexander Polikoff, Executive Director, BPI (June 7, 1976).

45 Gautreaux v. Pierce, 690 F.2d 616 (7th Cir. 1982).

46 This is a nonprofit citizens agency established in 1966 to promote fair housing.

because only the tenants, landlord, and HUD are aware of the subsidy. Most Gautreaux families are "black, female-headed, receive public aid and, before their Gautreaux Program moves, lived either in inner-city public housing projects or in inner-city neighborhoods characterized by poverty and racial impaction."[47]

The Section 8 program has been implemented successfully. The Leadership Council placed the first family in November 1976 and has administered the program for more than 15 years since then. Over 4,300 low-income families have used the Federal housing subsidy certificates to leave public housing and move into private units in the city or the suburbs.[48]

An early HUD report examined the results of the program on the Gautreaux families. It concluded that 84 percent of the families who moved to the suburbs were very satisfied with their new housing, public services, and their schools.[49] Perhaps more importantly, other research studies have found that recipients of housing subsidies who moved to middle-class suburbs experienced improved employment, even though the program provided no job assistance or encouragement,[50] and that the children of Gautreaux families did better in school than most observers expected.[51]

Gautreaux Remedy 2: Scattered Site Public Housing

The second Gautreaux program is the scattered site public housing. Its goal is to locate smaller public housing projects in neighborhoods throughout Chicago to remedy the earlier segregated housing and avoid concentrating blacks in highrise ghettos.

The scattered site program has not been successfully implemented. From 1969 to 1974 CHA and the city council were able to frustrate the court order and block the construction of any new public housing. CHA was then ordered by the judge to submit a list of potential sites to the city council.[52] Upon receiving the list, the council simply took no action, fearing the political consequences of integrating public housing. Ultimately the Court terminated the council's veto power over site selection and ended the 5-year hiatus in the construction of new public housing.[53]

The following years were marked by many delays and endless litigation. Only a few hundred additional units were built between 1979 and 1984. In 1987 the district court appointed a receiver to assume control of CHA's scattered site program.[54] Finally, the court appointed a private developer, a company that has made several hundred units available for Gautreaux families in neighborhoods across the city.[55]

One witness described the court's action and the reception it received as follows:

> The Federal district court issued its control decree that mandated integration by requiring local units of government . . . in Chicago to build two units of low income housing in predominantly white neighborhoods, for

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47 *What is Gautreaux?*, Business and Professional People for the Public Interest (1990), p. 9 [hereafter *What is Gautreaux?*].

48 Wiltz, "In Seeking Better Life, Location Key, Study Says," *N.Y. Times*, Oct. 9, 1991, at 1.

49 Division of Policy Studies, Department of Hous. & Urban Dev., *Gautreaux Housing Demonstration: An Evaluation of its Impact on Participating Households*, 11 (1979).

50 James E. Rosenbaum and Susan J. Popkin, "Employment and Earnings of Low-Income Blacks Who Move to Middle-Class Suburbs," in Christopher Jencks and Paul Peterson, *The Urban Underclass* (Brookings Institute, 1991).

51 J. Rosenbaum, L. Rubinowitz & M. Kukieke, *Low Income Black Children in White Suburban Schools* (Center for Urban Affairs and Policy Research, Northwestern University, 1986).

52 Order Gautreaux I, (filed Mar. 1, 1971) (order requiring CHA to submit a list of proposed sites by Mar. 5, 1971).

53 Gautreaux v. Chicago Hous. Auth., 342 F. Supp. 827 (N.D. Ill. 1972) *aff'd*, 480 F.2d 210 (7th Cir. 1973), *cert. denied*, 414 U.S. 1144 (1974).

54 Order, Gautreaux I & II (consolidated) (filed May 13, 1987).

55 *What is Gautreaux?*, p. 11.

every one constructed in black communities. The decree also terminated the construction of high-rise buildings for low-income housing programs.

The control met with a frosty reception here in Chicago. The city could not resolve the political and social issues presented by the decree. It was not until the appointment of . . . a court appointed receiver . . . that Chicago was able to initiate a program of scattered site housing.

The court compelled the authority to develop a formula that required 50 percent of the residents to come from the surrounding community, 25 percent from CHA waiting lists, and 25 percent from CHA existing projects that were being transferred.[56]

The ruling, intended to reverse the effects of building public housing developments in predominantly black, isolated areas, has been in effect in Chicago for years. Yet, Mr. Lane, the current CHA chairman, admits, that in 25 years, they have not been able to build scattered site housing in the intended, predominantly white communities on Chicago's southwest and northwest sides.[57]

The Status of Public Housing in Chicago in 1993

Continued Segregation from Economic Opportunity

Recognizing the history of public housing in Chicago, one witness testified that it was originally conceived as a program to provide transitional low-income housing to low-income citizens, a method of helping families to move up the economic ladder. Instead, it became a vehicle to segregate African Americans from other communities and was perpetrated by the Chicago Public Housing Authority, according to Hipolito Roldan, president of the Hispanic Housing Development Corporation and chairman of the Board of Latinos United.[58] He testified: "Historically, CHA segregated African Americans from neighborhoods with better schools, employment opportunities, and transportation systems, blinding public officials to the housing needs of other minority and nonminority groups."[59] Because the residential segregation reinforced a segregation from economic opportunities, "[w]hat started out as affordable transitional housing . . . became permanent housing of last resort."[60]

A research study demonstrated that between 1950 and 1970, public housing projects were targeted to poor, black neighborhoods, and that the presence of housing projects substantially increased the concentration of poverty in later years. The study concluded:

Public housing concentrates poverty because federal guidelines explicitly require public housing applicants to be poor . . . and because projects apparently generate class-selective migration into neighborhoods that contain them. Public housing thus represents a key institutional mechanism for concentrating large numbers of poor people within a small geographic space, often within dense, high-rise buildings. Because low-income projects were systematically targeted to black neighborhoods in a discriminatory fashion . . . this institutional mechanism greatly exacerbated the degree of poverty concentration for one group in particular—blacks.

[T]his kind of concentrated poverty is structurally permanent: no matter what the underlying trends in unemployment, wages, industrial structure, or civil rights enforcement, neighborhoods that contain housing projects will exhibit high levels of poverty concentration. Public housing thus represents a federally-funded, physically permanent institution for the isolation of

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56 Roldan Testimony, *Chicago Hearing*, vol. 1, pp. 111–12. The Hispanic Housing Development Corporation was created in 1975 by a group of Latino leaders, spearheaded by Reverend Daniel Alvarez, in response to findings of an Illinois housing task force that concluded that less than 1 percent of Chicago's public housing funds were being spent in Latino communities. Hispanic Housing Development Corporation, *Building Communities—Rebuilding Chicago*, p. 1. Latinos United is a not-for-profit housing advocacy organization.

57 Lane Testimony, *Chicago Hearing*, vol. 1, pp. 313–14.

58 Roldan Testimony, *Chicago Hearing*, vol. 1, pp. 110–11.

59 Ibid., p. 108.

60 Ibid., p. 111.

black families by race and class, and it must be considered an important structural cause of concentrated poverty in U.S. cities.[61]

At the Chicago hearing, Kale Williams, executive director of the Leadership Council for Metropolitan Open Communities, the agency under HUD contract to assist Gautreaux families, cited the success of the Gautreaux program—housing subsidies that help very poor, predominantly African American families move out of public housing and into the private market—as a solution. By his interpretation, the success of families who make that move, of the parents in finding work and of the children in school shows: "that the problem is not the values of the people who live in these inner cities. They are anxious to achieve and work and succeed as anybody else. It's their isolation from opportunity. And that is what we have to break down. . . . [B]ring opportunity back into those neighborhoods. . . ."[62]

At the time of the Commission hearing, CHA was very aware of the problem. Vincent Lane, chairman of CHA, described it:

> During my tenure at CHA, I have witnessed each day the direct link between access to opportunity, role models, strong community values, and social and economic mobility and a family's ability to survive and prosper. More importantly, there is a direct link between these opportunities, and the community in which a family lives—where and how they live.[63]

New Remedies

Chairman Lane testified about several experimental programs designed to link public housing with economic opportunity, which are at various stages of planning or implementation. One remedy Mr. Lane described, was a demonstration program as yet in its experimental stages. This program is intended to overcome segregated housing with scattered-site housing, but also to address another concern. As a result of the court's intervention, one witness complained, "[M]inorities, primarily black families, were moved into white neighborhoods," but rather than becoming part of those communities, they were "isolated within buildings, within those communities."[64] This program incorporates several mechanisms for gaining community support and involvement with the public housing. First, the authority met with neighborhood groups on the southwest and northwest sides for a year and a half to obtain a written document promising that these neighborhood groups would help build the scattered-site public housing in their communities. Second, in awarding contracts to private developers to develop the scattered site housing, the program provides bonus points for working with local community groups to help identify appropriate sites and architectural designs and that employ local housing managers. Third, as an incentive for the people who live in these communities, CHA agreed to establish a separate waiting list for people who come from that neighborhood and meet the public housing eligibility requirements to fill 50 percent of the housing units, rather than drawing 100 percent of the new tenants from their usual waiting list.[65] Lane also commented that "[T]his program that we're starting with scattered site housing on the southwest and northwest sides will provide some hope. . . ."[66]

Chairman Lane described two other public housing remedies designed to avoid communities with all low-income residents. Such remedies help ensure that a community has political leverage to get city services such as good schools and provides

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61 Douglas S. Massey and Sawn M. Kanaiaupuni, Population Research Center, NORC, University of Chicago, "Public Housing and the Concentration of Poverty," February 1992.

62 Williams Testimony, *Chicago Hearing*, vol. 1, pp. 238–39.

63 Lane, written statement submitted at *Chicago Hearing*, pp. 1–2.

64 Roldan Testimony, *Chicago Hearing*, vol. 1, p. 112.

65 Lane Testimony, *Chicago Hearing*, vol. 1, pp. 314–17.

66 Ibid., pp. 324–25.

good role models for children. The first remedy, implemented at Lake Park Place, provides for fixed low rent that has attracted working people to move in along with welfare families. CHA will screen the welfare families to ensure that those who move in are not shiftless and violence prone and will help maintain a safe, clean, and decent neighborhood.[67] Another remedy encourages private developers to build housing in the surrounding community, reserving 25 percent of the units for public housing eligible families.[68]

The Low Participation Rates of Other Minority Groups, Particularly Latinos

The historically low participation rates of Latinos in public housing, despite their need for such services, was another issue raised at the Chicago hearing. Hipolito Roldan testified that:

> CHA reports dating from 1970 to 1990 [show that] the percentage of Latinos in CHA's conventional housing programs remained at less than 2 percent. Over the same period, the percentage of Latinos in CHA's section 8 voucher program dropped from an unimpressive high of 2 percent, to a historic low of 1 percent. This stagnation occurred at a time when the city's Latino population was growing substantially.[69]

> Currently, an estimated 25 percent of Latino Chicagoans live at or below the poverty level. That is the level that's eligible for public housing. Latinos are currently 20 percent of . . . Chicago's population, and [are] the fastest growing minority group.

> Chicago Latinos occupy only 1.7 percent of the units in CHA's conventional housing program. . . and CHA's Section 8 Rental Certificate Program has less than 1.2 percent of its apartments occupied by Latinos in its family program, and 0.7 percent in its elderly program.

> Latinos constitute 5.9 percent of the waiting list for CHA family housing and 2.3 percent for elderly apartments. . . . As we look at the enormous waiting list in the Chicago Housing Authority, we're looking at the turn of the century before we start to see any meaningful participation of occupancy by Hispanics in public housing in the city.[70]

He further testified that program administrators have failed to reach out to the Latino community and have been reluctant to market its projects to the eligible Latino population.[71] In addition to its entrenched reliance on a public housing waiting list that had historically underrepresented Hispanics, sparse representation of Hispanics in the CHA work force has also impacted participation rates of Hispanics in public housing. A visible Hispanic work force at CHA could make housing programs more accessible and acceptable to Latinos. However, among the approximately 4,000 employees at CHA, only about 175 or 2.5 or 3 percent are Hispanic. Approximately 20 of them have managerial positions.[72]

CHA policies, in particular the interpretation of the *Gautreaux* decree, further limited the number of Latinos who could participate in public housing. Few Latinos were on the waiting list to

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67 Ibid., pp. 318–20, 324–25.

68 Ibid, pp. 321–22.

69 Roldan Testimony, *Chicago Hearing*, vol. 1, p. 109. Two reports document the less than 2 percent of Latinos in public housing using data through 1984. They are: Sylvia Puente and Alejandrina Basquez, "The Condition of Latino Housing in Chicago," May 29, 1989, especially pp. 38–47; and Nikolas Theodore, Chicago Urban League, "Disinvestment & Neglect: Changes in the Southside Housing Market," October 1989, especially p. 20 cf.

70 Roldan Testimony, *Chicago Hearing*, vol. 1, pp. 107–08.

71 Ibid., pp. 106–07.

72 Lane Testimony, *Chicago Hearing*, vol. 1, pp. 331–32.

Migdalia Rivera, Executive Director, Latino Institute, estimates the number of employees and Hispanic employees at CHA somewhat differently, but the percentage of Hispanic employees is the same. She reports that in 1988, 67 of 2,544 CHA employees were Latino—2.6 percent. The Latino employees included 15 who were employed as technicians, professionals, or officials and management. *See* Rivera, written statement submitted at *Chicago Hearing*, fig. 8. Hispanic representation is similarly low throughout city and State government. For further discussion, see chap. 5.

receive public housing when the court decree was issued. Authority staff selected the 50 percent of scattered-site housing residents who were to come from the community from among individuals already on the CHA waiting list. The formula was reinterpreted in 1989, only after intervention from Latinos United, a housing advocacy organization. The court order was then amended to include all community residents and institute a formal outreach program to attract neighborhood residents as prospective tenants.[73]

However, housing advocate Hipolito Roldan accused CHA of being indifferent toward Latinos. He claimed that CHA's failure to plan to serve a multiethnic, multiracial community alienates Latinos from society when the institutions they support with their taxes remain hostile toward their needs.[74]

Chairman Lane testified about the CHA's efforts to reach out to the Latino community. During the last 3 years, the CHA has worked with a coalition of Latino organizations and with the city's Hispanic aldermen. It has attempted to build scattered-site public housing in Hispanic communities. To make its offices more accessible, CHA hired a Spanish-speaking receptionist and now has telephone recordings in both English and Spanish. To increase the number of Latinos employed by the agency, it has held receptions and hired a Latino marketing firm to develop a program that would reach Latinos. Finally, it has increased the number of Latino and other minority contractors it uses from 6 percent to 39 percent of the contracts over the last 4 years.[75]

CHA "cannot get Latinos to move into conventional public housing unless it is in a Latino neighborhood," Mr. Lane testified.[76] To increase the number of Latinos in public housing, CHA proposed providing Section 8 certificates and vouchers so that the recipients could choose where they live, most likely in Latino neighborhoods. HUD rejected this proposal because it would discriminate against people, largely African Americans, who had been on the waiting list for 10 years.[77]

Mr. Lane emphasized that "adequate housing must be available. . . ." and mentioned the drastic reduction in the supply of affordable public and private housing in the past two decades and the inadequate resources available from Federal, State, and city governments.[78] A 10-year-long waiting list is a stark manifestation of the public housing shortage that Latinos, African Americans and other low-income minority groups face.

Recently, HUD proposed to change its national strategy of providing public housing services. As detailed in the Clinton administration's "Reinvention Blueprint," all of HUD's housing grant programs would be consolidated into three separate programs by 1998.[79] The new programs will consist of: Housing Certificates for Families and Individuals (provides housing assistance for renters and homeowners), the Affordable Housing Fund (for housing development), and the Community Opportunity Fund (supports development in distressed communities by expanding the concept of the Community Development Block Grant program).[80]

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73 Roldan Testimony, *Chicago Hearing*, vol. 1, p. 113.

74 Ibid., pp. 110–11.

75 Lane Testimony, *Chicago Hearing*, vol. 1, pp. 334–35.

76 Ibid., p. 337.

77 Ibid., p. 336.

78 Lane, written statement submitted at *Chicago Hearing*, pp. 2–3.

79 Paola Trimarco, "HUD Wants to Grant Power to Move; Voucher System Suggested," *Washington Times*, Feb. 17, 1995, p. F1.

80 Ibid., John R. Kasich, Chairman, U.S. House of Representatives, Committee on the Budget, "Reinvention Blueprint" (press release, Feb. 22, 1995).

The Blueprint includes a proposal to replace project-based housing subsidies with a tenant-based approach. This new certificate method would allow tenants the choice of remaining in public housing, or seeking better housing elsewhere in the same city. Working families would also be given a preference for admission to public housing.[81]

In addition, HUD anticipates restructuring public housing properties' debt in order to lower rents to reflect the properties' true market value. As a result, public housing agencies would then be competitive with the private housing market.[82] At the current time, HUD's proposal is being considered by Congress.

Enforcement of Laws Against Private Housing Discrimination

While African Americans and Hispanics suffered discrimination in segregated public housing, they also continue to face discrimination in private housing. The United States Department of Housing and Urban Development (HUD) conducted a study that indicated that minorities seeking housing in the U.S. are very likely to encounter discrimination. The study utilized matched pairs of minority and nonminority testers to seek the same housing opportunities and compared the treatment they received. The study revealed that in the rental market blacks experience some form of discrimination over half (53 percent) of the time, and Hispanics experience discrimination 46 percent of the time. In the sales market, the incidence of discrimination was even higher: black and Hispanic home buyers experienced discrimination 59 and 56 percent of the time respectively. The nature of the discriminatory treatment encountered ranged from complete denial of access to available units (11 and 7 percent of the time for blacks and Hispanics respectively in the rental market; 6 and 5 percent of the time for blacks and Hispanics in the sales market) to more subtle forms of discrimination, such as racial steering, withholding of information, and higher quoted prices.[83]

HUD's aggregate estimates of housing discrimination in the United States were based on studies in selected metropolitan areas across the country, including Chicago.[84] Commenting on these findings one witness testified: "[I]t's a national crisis when more than half of the minorities in the United States . . . encounter discrimination when they seek housing."[85]

Title VIII of the Civil Rights Act of 1968 (the Fair Housing Act), as amended by the Fair Housing Amendments Act of 1988 generally prohibits discrimination in housing on the basis of race, color, religion, national origin, sex, handicap, and familial status.[86] The 1988 act reaffirmed the practice requiring HUD to refer complaints to State and local agencies certified as being "substantially equivalent" in terms of their law and procedures.[87] Witnesses at the Chicago hearing complained that the enforcement of fair housing

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81 Judy A. England-Joseph, Director of Housing and Community Development Issues, Resources, Community and Economic Development Division, General Accounting Office (prepared statement before the Subcommittees on Housing Opportunity and Community Development and HUD Oversight and Structure; Committee on Banking, Housing, and Urban Affairs, United States Senate, Mar. 14, 1995).

82 Ibid.

83 Margery Austin Turner, Raymond J. Struyk, and John Yinger, *Housing Discrimination Study: Synthesis*, prepared for the U.S. Department of Housing and Urban Development, August 1991, pp. vi–vii.

84 John Yinger, *Housing Discrimination Study: Incidence of Discrimination and Variation in Discriminatory Behavior*, prepared for U.S. Department of Housing and Urban Development, October 1991, pp. 44–58.

85 Bradford Testimony, *Chicago Hearing*, vol. 1, p. 263.

86 Title VIII of the Civil Rights Act of 1968, 42 U.S.C.A. § 3601 et seq. (West 1977 & Supp. 1994). In addition to adding handicap and familial status as two additional bases of prohibited discrimination, the 1988 act also greatly expanded enforcement mechanisms and potential monetary and other relief available to victims of discrimination.

87 42 U.S.C.A. §3610(f)(3)(A) (West 1977 & Supp. 1994).

laws was lacking. Kale Williams, executive director of the Leadership Council for Metropolitan Open Communities, testified that the problem with the enforcement of the fair housing laws is not with the workers out in the field, but with the HUD guidelines and pressure to show a good record of closed cases, even if that means they can't go through a full investigation, or have to close some cases that really deserved a charge.[88] Similarly, Calvin Bradford, president, Community Reinvestment Associates testified that HUD has created a "travesty" out of the fair housing acts.[89] He further testified:

> Congress told HUD that it had to complete investigations of housing cases in 100 days. . . .HUD . . .[turned] this into a bureaucratic penalty. If the employees at HUD have too many cases that go past 100 days, they get a black mark on their record and this has encouraged officials at HUD to drop cases that have gone over 100 days or to discourage people from pursuing cases, even when the cases are valid. . . .[90]

The number of housing discrimination complaints has increased because HUD awarded contracts to many organizations to conduct fair housing marketing campaigns to inform people of fair housing rights. HUD also changed the hotline number from a local Washington number to a nationwide toll-free number.[91] Calvin Bradford reported that, as a result of these changes, "the level of complaints to [HUD's hotline] increased from 12,000 the previous year to 110,000 [calls] the following 6 months."[92] As a result of the large number of calls, many callers received busy signals.[93] Another witnesses testified, however, that the consequences were much more serious. "Inundated by all of these cases, HUD has conjured up a hundred different ways of eliminating cases, many of them unjustified," according to Calvin Bradford.[94] He further testified: "Many fair housing organizations and their attorneys now find that HUD offices try to talk their clients out of cases—or try to talk them into settling for minor amounts of damages in order to get the number of cases reduced."[95]

HUD's Assistant Secretary for Fair Housing and Equal Opportunity, Roberta Achtenberg addressed some of the reasons so few hotline inquiries result in cases and in even fewer reasonable cause determinations:

> Many of the inquiries which come in over the Housing Discrimination hotline do not result in complaints because many of the complaints are patently non-jurisdictional. Many citizens do not understand the terms "Fair Housing" and "Housing Discrimination" in the same sense that fair housing advocates and other civil rights

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88 Williams Testimony, *Chicago Hearing*, vol. 1, pp. 230–31.

89 Bradford Testimony, *Chicago Hearing*, vol. 1, p. 277.

90 Ibid., *Chicago Hearing*, vol. 1, pp. 277–79. Also see Bradford written statement submitted at Chicago Hearing.

As another consequence of "having created too many cases that HUD now has to figure out how to get rid of," Dr. Bradford went on to allege that the National Fair Housing Alliance, one of many organizations that conduct the fair housing marketing campaign, was penalized by HUD in the money it received during contract renewal. Assistant Secretary for Fair Housing and Equal Opportunity, Roberta Achtenberg, stated that "all awards were made in accordance with Department policies and procedures concerning discretionary grants and cooperative agreements. . . ." She explained that HUD has the authority to select portions of project proposals and to fund partially even highly ranked proposals in order to avoid funding duplicative proposals and to maximize the reach and value of Federal funding. Roberta Achtenberg, Assistant Secretary, Fair Housing and Equal Opportunity, U.S. Department of Housing and Urban Development, letter to Rosalind D. Gray, Acting General Counsel, U.S. Commission on Civil Rights, Washington, D.C., May 24, 1994, Attachment (hereafter *Achtenberg Correspondence*).

91 Achtenberg Correspondence.

92 Bradford Testimony, *Chicago Hearing*, vol. 1, p. 278. Also see Bradford, written statement submitted at *Chicago Hearing*.

93 Achtenberg Correspondence, attachment.

94 Bradford Testimony, *Chicago Hearing*, vol. 1, p. 277.

95 Bradford, written statement submitted at *Chicago Hearing*, p. 11.

professionals do. Often the inquiries concern landlord-tenant disputes, nepotism, apartment mismanagement, health code violations and other issues where the caller is not alleging unlawful discrimination on any basis set forth in the Fair Housing Act. Many of the calls to the hotline result in referrals to other Departmental offices, other federal agencies, consumer complaint bureaus, and state and local agencies.[96]

Fewer of these calls result in cases than in the past because, "[i]n the past, many cases were entered into the Department's tracking system before a thorough jurisdictional review was conducted."[97] Such cases then had to be closed administratively when HUD determined that it did not have jurisdiction over the subject matter.[98] Few cases result in a reasonable cause determination because "[t]he Department will only issue a reasonable cause determination where the evidence supports that determination. The fact is many cases are dismissed because the evidence in these cases does not support a reasonable cause determination."[99]

The United States Commission on Civil Rights has studied HUD's enforcement of fair housing laws in Chicago and other parts of the Nation. In a six-State region (region 5), which includes Chicago,[100] 6,455 cases were filed between fiscal year 1988 and 1993.[101] Thus, the enormous number of inquiries to the HUD hotline have produced relatively few "official" complaints—that is, forms completed, signed, and submitted by the complainants.

HUD's region 5 closed 3,163 of those 6,455 filed cases. Only 3 percent of the closed cases (85 cases) resulted in "cause determinations" (i.e., the complainant had cause for a discrimination complaint); 27 percent were successfully conciliated; and 17 percent were withdrawn with resolutions (i.e., the complainant withdrew the complaint usually after receiving some reparation). Another 22 percent were administrative closures (i.e., cases closed because of lack of jurisdiction, expiration of the time period for filing a complaint or inability to find or contact the complainant or sustain his or her cooperation) and 18 percent were closed without resolution. Twenty percent resulted in no-cause determinations. The small number of cases closed with cause determinations was typical of the other nine regions.[102]

In recent years there has been a reduction in the number of region 5 cases that have been open 100 days or more. At the end of fiscal year 1990,

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96 Achtenberg Correspondence, attachment.

97 Ibid.

98 Ibid.

99 Ibid.

100 HUD's Region 5 contains Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin.

101 Compiled from data the U.S. Commission on Civil Rights, Office of Civil Rights Enforcement, obtained from the U.S. Department of Housing and Urban Development, Office of Fair Housing and Equal Opportunity, Integrated Title VIII Database System, (hereafter, HUD data).

102 HUD data.

From 1987 through 1992, the Illinois Department of Human Rights received 269 housing discrimination complaints on the basis of race or national origin. Of those 269 cases, only 41(15.2 percent) resulted in findings of substantial evidence. The remaining cases were disposed of for the following reasons: 7 (2.6 percent) lack of jurisdiction; 25 (9.3 percent) failure to proceed; 43 (16 percent) lack of substantial evidence; 46 (17.1 percent) not resolved; 62 (23 percent) withdrawn; and 36 (13.4) percent adjusted with terms and 9 (3.4 percent) adjusted and withdrawn. Documents received pursuant to a subpoena duces tecum from Rose Mary Bombela, Director, Illinois Department of Human Rights.

The City of Chicago Commission on Human Relations is a local arm that pursues claims of housing discrimination under the Chicago Fair Housing Ordinance. Of the 169 cases of alleged discrimination handled between May 6, 1990 and May 6, 1991, 68 were dismissed, 113 were conciliated, 61 were settled, 2 resulted in requests for review, but no requests were granted, and no administrative hearings were held. City of Chicago Commission on Human Relations, *Annual Report 1990–1991*, p. 15.

region 5 had 583 cases in its inventory, of which 365 cases (63 percent) were aged 100 days or more. Region 5's inventory, at the end of fiscal year 1991, had risen to 683 cases, with 300 cases (44 percent) having aged 100 days or more. By the end of fiscal year 1992, it had 327 cases in its inventory; the 100-day backlog had 173 cases (53 percent).[103]

Thus, fair housing enforcement across the six-State region that includes Chicago has been untimely. Complaint processing has taken an inordinate amount of time, particularly in the early years of the new law, and relatively few cause determinations were issued. Furthermore, anecdotal evidence in the study indicated that in the first 2 years of the new law, quantity was emphasized over quality in evaluating staff performance on processing complaints.[104] Findings and recommendations based upon the study's nationwide results are found in the Commission report.[105]

As a tool by which Federal fair housing laws could be better enforced, a witness at the Chicago hearing recommended:

> The Federal Government distributes to . . . every sizable city and urban county in the country. . . . And the communities depend on that money. The law says that they should affirmatively further fair housing as a condition for receiving that money. There's no regulation on that. The assistant secretaries of HUD for Fair Housing and Community Planning and Development write a letter each year saying, 'Pretty please would you do this,' and it has no force. . . . A simple change in the legislation . . . saying that the showing of . . . affirmative action on fair housing . . . is a requirement that is to be enforced by the distributing agency . . . would . . . [bring about] change in a lot of these communities.[106]

Summary

The Chicago Housing Authority has had a long history of practices through which public housing has contributed to the segregation of African Americans from white communities in the city. Two remedies were initiated after a decade of litigation in the *Gautreaux* case. The first, housing subsidies that enable families to obtain housing on the private market, has been successful in increasing the level of employment of these families and the school performance of their children. The second, scattered-site housing, has met with resistance and has yet to be fully implemented. Community witnesses were distressed that segregated public housing continues; that scattered-site housing has not been fully implemented; and that the segregated public housing isolates African Americans from the opportunities for good jobs and good schools that would enable them to escape poverty and public housing. Other witnesses are concerned that perceptions that public housing is only for African Americans limits Latino participation in the program. Although CHA has a number of remedies they have tried or are currently trying, they have yet to overcome the

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103 HUD data.

104 Memorandum to Eileen Rudert, Office of General Counsel, U.S. Commission on Civil Rights, Suzanne Crowell, Office of Civil Rights Evaluation, U.S. Commission on Civil Rights, Sept. 21, 1993.

105 U.S. Commission on Civil Rights, *The Fair Housing Amendments Act of 1988: The Enforcement Report* (September 1994).

The U.S. Commission on Civil Rights has another report on the enforcement of fair housing laws. *Prospects and Impact of Losing State and Local Agencies from the Federal Fair Housing System*, (September 1992), examines HUD's ability to enforce the Federal Fair Housing Act in light of the significant number of State and local agencies that have yet to be certified as having substantially equivalent laws under the amendments, a requirement for these agencies to assume responsibility for investigating complaints about fair housing.

For a discussion of similar topics in another city, see New York State Advisory Committee to the U.S. Commission on Civil Rights, *Shelter Issues in New York: The New Fair Housing Amendments and Western New York Public Housing*, August 1992.

106 Williams Testimony, *Chicago Hearing*, vol. 1, pp. 231–32. Calvin Bradford also criticizes HUD for failing to require that recipients of Community Development Block Grants engage in a study of the barriers to fair housing. *See* Bradford, written statement submitted at *Chicago Hearing*.

stark segregation of residents of public housing from other communities and the exclusion of eligible Hispanic families from receiving these services.

Finally, witnesses testified about the U.S. Department of Housing and Urban Development's lax enforcement of the fair housing laws, as only a small percentage of closed discrimination complaints result in "cause determinations." A majority of the complaints are closed administratively, withdrawn by the complainants, or result in findings of "no cause," due in part to pressure on the investigators to resolve complaints quickly and maintain a good record of closed cases.

Chapter 5. The Quality and Accessibility of Health Care for Minority Groups in Chicago

The health status of individuals of disadvantaged backgrounds, including racial and ethnic minorities, is significantly lower than the health status of the general U.S. population.[1] For Chicago's poor and minority residents, lack of essential, basic health care is acute. Many of the concerns regarding the quality and accessibility of health care raised by witnesses at the Chicago hearing are shared by many Americans and have become a part of the larger national debate on health care reform. Pressing problems include a general shortage of public health care to meet the basic needs of many of those Chicago area residents in greatest need. Language and cultural barriers also prevent many minority residents from obtaining appropriate health services.

A Shortage of Public Health Care

The Chicago Department of Health, with 19 medical clinics and 18 mental health centers,[2] and the Cook County Bureau of Health Services, with hospitals and ambulatory facilities located throughout the county,[3] provide care to low-income persons regardless of their ability to pay. The Chicago Department of Health is the largest single provider of outpatient care in Chicago with over 250,000 clients and over 700,000 annual patient visits.[4] Cook County Hospital, a 918-bed hospital, had 33,982 admissions and 244,694 patient days, and more than 600,000 on-site outpatient visits during fiscal year 1991.[5]

Fifty-one percent of the patients receiving primary care in the Chicago Department of Health's clinics are African American, 32.7 percent are Hispanic, 9.3 percent are white, 3.3 percent are Asian, and another 3.7 percent are other ethnic groups.[6] In the year ending June 1989, the patients admitted to, or discharged, from Cook County Hospital were 72 percent African American, 18 percent Hispanic, 8 percent white, and 1 percent Asian.[7] Despite the services by these and other health care systems, the Chicago area has a shortage of health care. This shortage disproportionately affects those who can least afford private care—the city's poor and minority communities.

In 1989 the Governor, the mayor, and the president of the Cook County Board of Commissioners appointed two summit committees to review the availability of health care in the Chicago metropolitan area and to develop a plan to improve the delivery of health care to all residents of Chicago

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1 The Disadvantaged Minority Health Improvement Act of 1990, Pub. L. No. 101–527, Nov. 6, 1990, 104 Stat. 2311 (codified at 42 U.S.C. § 300u-6 (1993)).

2 Sheila Lyne, RSM, Commissioner, City of Chicago, Department of Health, testimony, *Chicago Hearing*, vol. 3, pp. 59–60.

3 Ruth Rothstein, Director, Cook County Hospital, and Chief, Bureau of Health Service, County of Cook, testimony, *Chicago Hearing*, vol. 3, p. 75.

4 Lyne, written statement submitted at *Chicago Hearing*, p. 1.

5 Materials Ruth M. Rothstein produced to the U.S. Commission on Civil Rights in response to a subpoena duces tecum, "Patients Seen at Cook County Hospital during Fiscal Year 1991 and their Racial/Ethnic Composition" (hereafter *Cook County Hospital Subpoenaed Materials*). Both serve a predominately minority population.

6 Lyne Testimony, *Chicago Hearing*, vol. 3, p. 61; Lyne, written statement submitted at *Chicago Hearing*, p. 1.

7 *Cook County Hospital Subpoenaed Materials*, "Patients Seen at Cook County Hospital during Fiscal Year 1991 and their Racial/Ethnic Composition," and "Cook County Hospital: Race/Ethnicity of Inpatient Discharges."

and Cook County who rely on the city, county, or State to provide or finance such services.[8] Critical gaps in the current health care delivery system were found. Thirty-two Chicago-area communities, concentrated in the south and west sides of Chicago and the far south suburbs, are designated "health manpower shortage areas" by the U.S. Department of Health and Human Services, indicating serious service gaps.[9] The committees concluded that the Chicago area had a shortage of about 2 million annual ambulatory visits.[10] This shortage translates into an enormous delay and denial of care for the poor, and in particular, minority residents.[11]

The closing of health care facilities has greatly contributed to these service gaps. Sixteen of the city's 68 hospitals closed in the last 15 years, all but one of which served the poor. These hospitals were forced to close because of financial difficulties arising from serving large numbers of poor, uninsured, or underinsured patients. The hospitals that closed were serving underserved areas (i.e., they had a low bed to population ratio) and each closing, because it transferred a full load of patients elsewhere, hurt the next nearest, already overburdened, hospital. A half dozen hospitals currently await that same fate.[12] In addition, financial difficulties among the area's hospitals have contributed to the inability to implement recommendations of the health summit intended to help overcome health care shortages[13] and deteriorating physical plants. Ruth Rothstein, director of Cook County Hospital, described the facility as the oldest public hospital in the country and as "a crumbling, old, nonfunctional physical plant" that "should have been replaced, probably in the early [19]40s."[14]

The closing of hospitals and overburdening of others has had far-reaching effects on the communities they serve. The nature of medical care that is available has changed. For example, witnesses testified about the long delays in obtaining appointments; the lack of continuity between the staff providing care in the clinics versus hospitals, particularly for prenatal care and delivery; hospitals' transferring of poor patients to other hospitals; and hospital decisions allocating resources between various programs. In addition to these changes in the nature of available health care, hospital closings result in a loss of jobs and community ties.[15] Some of these issues are discussed further below.

Long Delays in Obtaining Appointments

Witnesses testified that the shortage of health care led to long waits for appointments. With a

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8 Chicago and Cook County Health Care Action Plan, *Report of the Chicago and Cook County Health Care Summit*, vol. II: System Analysis and Design, April 1990, vol. 1, p. 1 (hereafter *Summit Report*).

9 *Summit Report*, vol. 2, Ambulatory Care, p. 3.

10 Quentin Young, M.D., Chairman, Health and Medicine Policy Research Group; Former Chairman, Department of Medicine, Cook County Hospital; Founder of the Committee to End Discrimination in Chicago Medical Institutions, testimony, *Chicago Hearing*, vol. 3, p. 13. *See also Summit Report*, vol. 1, pp. 2–24.

11 Young Testimony, *Chicago Hearing*, vol. 3, p. 13.

12 Ibid., pp. 13–14.

13 Lyne Testimony, *Chicago Hearing*, vol. 3, pp. 82–83.

In response to the recommendations of the health summit, the city of Chicago health department, the County of Cook, and the private sector have established an advisory health care council. This council is made up of 60 health care providers from the public and private sectors and academic institutions. As of the June 1992 Commission hearing, the board had been meeting for about 1 year. Its many subcommittees were trying to implement the recommendations of the Health Care Summit using available resources such as funds from the community trust. Rothstein Testimony, *Chicago Hearing*, vol. 3, p. 79.

14 Rothstein Testimony, *Chicago Hearing*, vol. 3, p. 73.

15 Young Testimony, *Chicago Hearing*, vol. 3, pp. 13–14.

loss of approximately 600 employees over a 5-year period at the Chicago Department of Health, waiting times for new nonemergency patients doubled between 1988 and 1989. For example, at the Department's Englewood Clinic, the waiting time for an adult, nonobstetric patient, was 6 months.[16] According to Dr. Quentin Young, chairman of the health and medicine policy research group and the former chairman of the department of medicine, at Cook County Hospital, patients with serious, potentially lethal, illnesses that do not require hospitalization wait a long time for an appointment and then are referred to the General Medical Clinic for an appointment 9 months later.[17] He further testified:

> I put this to you, that this is not merely unfair, unjust, and discriminatory, but uncivilized. And is not uncharacteristic of many of the aspects of health care in our city. I am obviously totally persuaded that it's a denial of human rights, as well as civil rights, when people cannot get access to care. And when this regularly falls on the backs, overwhelmingly of poor and minority people, it certainly comes under a number . . . of legal rights that have been given the American people, or more accurately, been won by the American people in hard struggles.[18]

A Cook County Hospital official claimed, however, that the wait for an appointment at the General Medical Clinic was two to three months.[19] Sheila Lyne, commissioner of the City of Chicago Department of Health, admitted:

> [W]e obviously do not have enough staff . . . [or] service to really provide care for all those who come to us. There are inordinate waits in some of our clinics for new appointments. For instance, in one of our clinics, before we began to collaborate with other private, not-for-profit facilities, women were waiting 4 1/2 months for their first prenatal visit, [nearing their] time for delivery.[20]

She further testified that by collaborating with other not-for-profit facilities in that primarily Hispanic area, the wait was reduced to a month. However, reducing the length of time before the patient is seen by a doctor is difficult when individuals do not have any third party insurer or medicaid.[21]

Lack of Continuity in Clinic and Hospital Care

After the inordinately long delay in receiving prenatal care through a Chicago Department of Health clinic, an expectant mother must develop a rapport with a new doctor when she goes to the hospital to deliver her baby. Recently, physicians have begun to provide only prenatal care because an inopportune delivery might cause them to keep other patients waiting.[22] When clinics that provide prenatal care are not linked with the hospitals where babies are delivered, patients may end up in the emergency room of any number of local private hospitals or at Cook County Hospital. Thus, the same doctor who saw the pregnant woman does not see her at delivery.[23] In the suburbs, the problem has been more serious than in the inner city. In the southern suburbs, three Cook County clinics provided prenatal care, but the physicians in the clinics did not have staff privileges to deliver the babies in the hospitals. Thus, the patients either went to an emergency

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16 *Summit Report*, vol. 2, Ambulatory Care, p. 4.

17 Ibid., pp. 14–16.

18 Young Testimony, *Chicago Hearing*, vol. 3, pp. 16–17.

19 Laurie Thomson, Cook County Hospital, Letter to U.S. Commission on Civil Rights, p. 2. (hereafter *Thomson Letter*)

20 Lyne Testimony, *Chicago Hearing*, vol. 3, pp. 66–67.

21 Ibid., p. 67.

22 Ibid., pp. 85–86.

23 Rothstein Testimony, *Chicago Hearing*, vol. 3, pp. 87–88.

room, or local private hospital, or transported themselves to Cook County Hospital.[24]

The Health Care Summit recommended linking qualified primary care providers who can provide prenatal (the period of time after conception and before birth) care more closely with perinatal (the period of time between conception and the end of the first month of life) networks either by giving doctors admitting and delivery privileges or through contractual arrangements.[25] The Chicago Department of Health has arrangements with partnership hospitals for its doctors to perform deliveries. Thus, prenatal patients are referred to a partnership hospital, perhaps in the 28th week, to get accustomed to the hospital and the doctor. The Department of Health is also considering using midwifery to provide the continuity between prenatal care and delivery.[26] At the time of the hearing, the director of Cook County Hospital did not regard this problem as solved.[27]

Hospital Transferrals of Poor Patients

Witnesses reported that the emergency service in Chicago takes patients to the nearest hospital because a shorter ambulance delivery is in the best interest of the patients. However, a hospital practice of determining the patient's ability to pay before rendering services ("patient dumping") has been documented. Although the hospital tries to avoid harming a patient who is in an emergent state, prudent managers move patients out of their hospital into the county hospital when the patient can be safely transported. Thus, the county hospital, is constantly in need of sufficient funds to provide services because the overwhelming majority of its patients are uninsured. The city once had free services or sliding scale payments, allowing a private physician to refer impoverished patients to convenient locations near their home; now the only alternative is Cook County Hospital.[28]

One health summit recommendation was to conduct a study to determine to what extent pregnant women are inappropriately transferred.[29] It was further recommended that if necessary, Cook County Hospital should improve reporting systems regarding transferred patients to assist in monitoring and enforcing State and Federal regulations.[30] Ms. Rothstein reported that the study showed that ambulances, often but not always, took women to the closest hospital.[31] Both Commissioner Lyne and Ms. Rothstein admitted that the ability to pay may determine which hospital a patient is transported to in order to receive medical services. They regarded this as an unfortunate situation, fraught with liabilities, but necessary because hospitals could only absorb a limited amount of financial loss when caring for indigent patients.[32]

Cook County Hospital has begun to work with the private sector to develop a plan of geographical areas of responsibility for each hospital so that no one institution is overburdened. But, Ms. Rothstein testified, this project, along with many others, needs financial resources to solve the problems. She explained that developing a public hospital system merely needs a unifying catalyst to develop their roles as health care providers. But, the

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24 Ibid., pp. 86–87.

25 Lyne Testimony, *Chicago Hearing*, vol. 3, pp. 85–86. *See also Summit Report*, vol. 1, p. 18; vol. 2, Special Needs: Perinatal Care, p. 2.

26 Lyne Testimony, *Chicago Hearing*, vol. 3, pp. 85–86.

27 Rothstein Testimony, *Chicago Hearing*, vol. 3, p. 87.

28 Young Testimony, *Chicago Hearing*, vol. 3, pp. 54–56.

29 *Summit Report*, vol. 2, Special Needs: Perinatal Care, p. 19.

30 *Summit Report*, vol. 2, Special Needs: Perinatal Care, p. 19.

31 Lyne Testimony and Rothstein Testimony, *Chicago Hearing*, vol. 3, pp. 88–90.

32 Ibid., pp. 90–91.

better and faster solution, according to her, is a national health reform system.[33]

Hospital Allocation of Resources Among Programs

Health care administrators face many decisions in allocating limited resources between providing primary care, practicing preventative medicine through education, and promoting viability in the communities they serve.

Ms. Rothstein testified that programming health care services was more difficult in the public sector. Unlike in the private sector, programs could not be eliminated because they are provided by other hospitals. Because the public hospital is viewed as "the hospital of last resort," its patients must be offered the same quality of care and technology that is available to others and must duplicate services available at private hospitals. Duplication of such services as magnetic resonance imaging (MRIs) machines[34] and open heart surgery in public hospitals could be avoided only if the system could be regionalized to ensure equality of care and payment for the uninsured and underinsured.[35]

One example of a change in services because of a severe shortage of funds and other programming decisions is the city's mental health program. For many years, city funds were used to supplement the State mental health program for adults. More recently, however, an advisory board decided more funds should be spent on children and adolescent programs (particularly drug abuse problems). Furthermore, Commissioner Lyne testified that the "pitiful" quantity of funds are insufficient even to diagnose patients. Thus, funds pay for group therapy, rather than having individualized counseling. Reductions in funds in the previous year reduced the staff of the city's mental health program by 70 positions (40 individuals and 30 vacancies). Because most of the funds paid for after-care, staff have been redistributed to attempt early treatment at the beginning of the cycle, in hopes that after-care is no longer necessary. In addition, drug abuse prevention still requires the dedication of huge amounts of Federal funds, Lyne testified.[36]

Health departments must also allocate resources for epidemiological diseases such as infant mortality, AIDS, sexually transmitted diseases (discussed further in chapter), and preventive medicine such as mammography and immunization. Commissioner Lyne testified that the Chicago health department is planning to rely upon community advisory councils (Facility Health Boards), to provide input into difficult decisions about programming and to help set priorities for dividing resources between such illnesses.[37]

According to its director, Cook County Hospital is examining ways to increase the indigent population's access to primary care outpatient facilities in the southern suburbs, where the hospitals do not accept public aid, uninsured, or underinsured patients. In addition, Cook County Hospital is trying to reach out to the community, by providing health care, jobs, and education, and by serving as a catalyst for building new housing on the west side of Chicago.[38]

Sources of Financial Difficulties and Solutions to End Them

All of the witnesses attributed the financial difficulties of the hospitals, in part, to serving poor and uninsured populations. The testimonies included: inadequate reimbursement levels for medicaid payments, cuts in governmental funds, and the need for a national health care system.

Some witnesses attributed the health care system's financial difficulties to medicaid's practice

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33 Rothstein Testimony, *Chicago Hearing*, vol. 3, pp. 87–88.

34 An MRI is a scan for abnormalities that may be performed on any body part.

35 Rothstein Testimony, *Chicago Hearing*, vol. 3, pp. 92–94.

36 Lyne Testimony, *Chicago Hearing*, vol. 3, pp. 96–97.

37 Ibid., pp. 95–96.

38 Rothstein Testimony, *Chicago Hearing*, vol. 3, pp. 74–77.

of compensating providers at a lower reimbursement rate.[39] One report indicates the medicaid pays 67 cents for every dollar of costs.[40] Ms. Lyne reported that the department of health received two checks from the State of Illinois medicaid program only after much begging, but the funds covered only about 15 percent of the department's anticipated costs.[41] Subsequent to the hearing, the Illinois General Assembly approved legislation, that awaits Federal approval, which will alter how the $5 billion-a-year system will provide health care to the poor. The most dramatic change is that the plan will shift most of the State's medicaid population to a managed-care system in which a primary care provider coordinates the type of care patients receive as treatment.[42]

Another witness reported that community health care centers that serve poor and uninsured communities receive very little City, State, or Federal funding. For example, the Alivio Medical Center, a not-for-profit community health center, is located in the middle of the largest Hispanic communities of Pilsen, Little Village, and Back of the Yards, and serves 27 percent of the city's total Hispanic population. Of the population it serves, 81 percent are at, or below, the poverty level; and 40 percent are without health insurance. Yet, only 3 percent of its $1.2 million budget comes from the city and State, with the remainder coming from private foundations, corporations, and patient revenues.[43]

Arguing for a national health care system, one witness asserted that the health care system cannot operate on the premises of a free market. "There's no relationship between need and ability to pay, between prudent buyer and providers."[44] The market approach marginalizes even more people. Doctors and hospitals cannot be charitable because they are no longer profitable.[45] Thus, witnesses advocated for a national health care system.[46] One recommended insurance reform to restructure the finances of the American health care system, in order to achieve decent health care for minorities that eliminates discriminatory practices. For example, this witness said, Illinois has a plan to tax all hospitals and create a fund with matching Federal funds that benefits hospitals with the largest number of medicaid patients.[47]

Increasing Accessibility to Health Insurance

The health summit recommended that the Illinois Department of Public Aid provide on-site medicaid enrollment at all major primary health care sites with significant numbers of nonenrolled eligible patients.[48] According to the director of Cook County Hospital, the Illinois Department of Public Aid does not have on-site offices in every facility of the County Hospital System. However, it opened an on-site public aid office in 1992 to enroll outpatients. Unfortunately, the public aid office is located a block away from its Fantus clinic. The percentage of obstetrical patients

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39 Ibid., p. 78.

40 Young Testimony, *Chicago Hearing*, vol. 3, pp. 13–14.

41 Lyne Testimony, *Chicago Hearing*, vol. 3, pp. 82–83.

42 Bonita Brodt, "Medicaid deal is only a beginning," *Chicago Tribune*, July 14, 1994, section 1, p. 3.

43 Eduardo DeJesus, Director of Finance, Alivio Medical Center, testimony, *Chicago Hearing*, vol. 3, pp. 5–7.

44 Young Testimony, *Chicago Hearing*, vol. 3, p. 52.

45 Ibid., p. 52.

46 *See* Young Testimony, *Chicago Hearing*, vol. 3, p. 37–38, and Rothstein Testimony, *Chicago Hearing*, vol. 3, p. 77.

47 Young Testimony, *Chicago Hearing*, vol. 3, p. 37–38.

48 Rothstein Testimony, *Chicago Hearing*, vol. 3, pp. 80–81. *See also Summit Report*, vol 1., pp. 14–16.

applying for public aid increased from 18 percent 1 1/2 years ago to 59 percent at the time of the Chicago hearing.[49]

The Illinois Department of Public Aid reduced the 35-page application form to three and a half pages and has trained department of health employees to do on-site enrollment in order to encourage applications for health insurance, however, on-site enrollment continues to be performed manually because of a lack of computer terminals. Furthermore, when patients who are members of health maintenance organizations (HMOs) continue to use department of health clinics, department of health staff are not permitted to remove them from the HMO rolls. Thus, the HMO continues to receive a capitation rate although their patients are being treated by the department of health, according to the department's commissioner.[50]

Language and Cultural Barriers to Health Care

In addition to the general shortage of health care providers in the Chicago metropolitan area, the Hispanic community, as the city's largest language minority group, faces additional hurdles in obtaining appropriate health care. Witnesses at the Chicago hearing testified about the lack of accessibility due to cultural and linguistic barriers that hinder access to health care and prevent the treatment of potentially life-threatening health conditions.[51] The Hispanic community's accessibility to health care is restricted by low income, lack of health insurance, the shortage of bilingual, bicultural medical personnel or medically trained interpreters, and the lack of models of health care delivery that emphasize diversity and multicultural approaches.[52] It is also essential to increase minority participation in health care planning, and combat some diseases that are of epidemic proportions, particularly in the Hispanic community.

Increasing Bilingual Medical Care Staff

Both community witnesses and officials agreed that the Chicago health care system must overcome any existing language barriers and provide culturally sensitive service to an ethnically diverse population. In a 1988 study, Travelers and Immigrants Aid identified an acute shortage in the Chicago Department of Health clinics.[53] The department of health Commissioner Lyne testified that at the time of the hearing, of the city's 19 medical clinics and 18 mental health centers, about four clinics serve a multicultural clientele.[54] These include the Uptown, West Town, Lower West Side, and South Chicago clinics. Commissioner Lyne testified that their survey of the Uptown clinic's patients revealed that 77 percent

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49 Rothstein Testimony, *Chicago Hearing*, vol. 3, pp. 80–81. Sheila Lyne, Commissioner, Department of Health, City of Chicago, correspondence to Rosalind D. Gray, Acting General Counsel, United States Commission on Civil Rights, Washington, DC, May 12, 1994 (hereafter *Lyne Correspondence*), p. 2.

50 Lyne Testimony, *Chicago Hearing*, vol. 3, pp. 81–83. *See also* Lyne Correspondence, p. 2.

51 Linda Coronado, Immigrant and Refugee Health Task Force, and Director, Volunteer Services, Cook County Hospital, testimony, *Chicago Hearing*, vol. 3, p. 22. *See also* DeJesus Testimony, *Chicago Hearing*, vol. 3, p. 10.

52 Coronado Testimony, *Chicago Hearing*, vol. 3, pp. 20–21. Travelers & Immigrants Aid convened the Immigrant and Refugee Health Task Force in 1991 to advocate universal access to health care for immigrants and refugees across the city. Its members include hospital and clinic personnel and members of immigrant and refugee community organizations who from come from diverse cultures and ethnic and racial groups.

53 Coronado Testimony, *Chicago Hearing*, vol. 3, p. 22.

54 The four clinics were the Uptown Clinic on the north side, the West Town Clinic near the west side, the Lower West Side clinic, in the near west, mid-south area, and the South Chicago Clinic, a maternal and child care clinic on the far southeast side. In her testimony, Commissioner Lyne provided percentages of Hispanic clientele and staff for each clinic similar to those reported in table 5.1. In addition, Ms. Lyne stated, staff members speak other languages, such as Vietnamese, Thai, Polish, Italian, and Pakistani. In the Uptown Clinic, 38 of 108 staff members speak other foreign languages. Lyne Testimony, *Chicago Hearing*, vol. 3, pp. 61–64.

TABLE 5.1
Chicago Department of Health Clinics with Large Hispanic Clienteles

Clinics	Hispanic clientele	Staff		
		Total	Hispanic	Spanish-speaking
Department of Health*	32%	1,824	188 (10%)	282 (15%)
Lower West Side Clinic	88%	73	24 (33%)	26 (36%)
Davis Square	84%	7	1 (14%)	1 (14%)
West Town Clinic	79%	66	25 (38%)	24 (36%)
South Lawndale	79%	45	12 (27%)	11 (24%)
South Chicago Clinic	51%	30	11 (37%)	15 (50%)
Lakeview	39%	46	6 (13%)	15 (33%)
Uptown Clinic	29%	108	8 (7%)	15 (14%)

Note: Includes clinics with clienteles that are more than 8 percent Hispanic.
* 19 medical clinics, 18 mental health centers.

Source: Sheila Lyne, RSM, Commissioner, City of Chicago, Department of Health, subpoenaed materials, (Exhibits B, C, and D), *Chicago Hearing* (June 25, 1992).

needed no assistance in understanding English.[55] However, this may not be representative of the overall need for bilingual assistance since the Uptown clinic had a lower percentage of Hispanic patients (29 percent) than other clinics.[56]

Commission analysis of subpoenaed materials reveals that seven of the city's department of health clinics had a patient population that was between 29 and 88 percent Hispanic.[57] The bilingual and Hispanic staff of these clinics varied widely (see table 5.1). However, in all the clinics, such staffing fails to address the needs of the significant Hispanic and Spanish-speaking patient population.

The city's Lower West Side Clinic has the largest percentage of Hispanic patients (88 percent), and the largest number of Hispanic and Spanish-speaking staff of all the city's clinics, with 24 Hispanic staff (33 percent) and 26 bilingual staff (36 percent). However, additional staff is still needed. Similarly, the South Lawndale Clinics' patients are 79 percent Hispanic, yet only 12 (27 percent) of its staff are Hispanic and 11 (24 percent) are Spanish. Although the Davis Square Clinic has a large Hispanic patient population (84 percent), only one staff member (a medical service provider) is Hispanic with bilingual capability.[58] Of the seven clinics with the largest Hispanic patient population, only two clinics have a Spanish-speaking licensed practical nurse (Lower West Side and Lakeview clinics). With respect to other bilingual health care professionals, the clinics have between 0-2 clinic nurses, 0-3 physicians, and 0-1 dentists that are Spanish-speaking.[59]

Commissioner Lyne testified about the city's past attempts to hire more bilingual staff. In 1990, of the 200 new hires in the department of health, 21 percent were Hispanic and 6 percent were

55 Ibid., p. 62; Lyne, written statement submitted at *Chicago Hearing*, p. 2.

56 Materials Sheila Lyne, RSM, Commissioner, City of Chicago, Department of Health, produced to the Commission in response to a subpoena duces tecum, exhibit B (hereafter *Department of Health Subpoenaed Materials*).

57 *Department of Health Subpoenaed Materials*, exhibit B.

58 *Department of Health Subpoenaed Materials*, exhibits B, C, D, E.

59 *Department of Health Subpoenaed Materials*, exhibit E.

Asian. In 1991, 26 percent of the new hires were Hispanic and 6 percent Asian.[60] Commissioner Lyne further testified that the department of health advertises professional positions in minority community papers, particularly in Hispanic papers. It requires the personnel department to include bilingual, particularly Spanish-speaking, candidates on all career service lists. After a recent layoff, open positions were filled with laid off employees only if they were bilingual.[61]

Lyne testified that a joint training program with the University of Illinois for nurses aides resulted in hiring only two Hispanics because other Chicago area health providers had employed the Hispanic aides first. According to Commissioner Lyne, obstacles that hinder further advances in hiring bilingual, bicultural candidates include the lack of such candidates on career service lists, demographic changes (more Hispanic professionals moving to the suburbs, which disqualifies them for city employment), and difficulty retaining Hispanic professionals (due to the high demand, and opportunities for higher salaries in employment outside the Department).[62]

A similar need for bilingual staff exists at Cook County Hospital. Hospital statistics reveal that 5,601 of the nearly 32,000 inpatient admissions 18 percent during the year July 1988 through June 1989 were Hispanic.[63] Hospital officials were unable to provide any statistics on the types of languages spoken by the staff, or the number of bilingual staff employed at the hospital.[64] Only 5.1 percent of Cook County Hospital's employees were Hispanic.[65] Although "the racial/ethnic mix for outpatients is thought to mirror closely that for inpatients"[66]—suggesting that 18 percent of outpatients are also Hispanic—only 0.1 percent of the employees in ambulatory outpatient services are Hispanic.[67] During fiscal year 1991 Cook County Hospital had only three staff interpreters.[68]

Since the Chicago hearing, Cook County Hospital has arranged for the hospital to join the AT&T language line, begun compensating selected staff for bilingual skills, offered Spanish classes for appropriate staff on a continuing basis, provided special training for interpreters, and undertaken a review of requests for interpreters to evaluate the current deployment of interpreter staff.[69]

Providing Interpreters and Bilingual Materials

Effective communication between the patient and health care provider is the foundation for the delivery of appropriate health services. Patients requested interpreter services at Cook County Hospital 9,625 times during fiscal year 1991;

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60 Lyne Testimony, *Chicago Hearing*, vol. 3, p. 64.

61 Lyne Testimony, *Chicago Hearing*, vol.3, pp. 64–65; Lyne, written statement submitted at *Chicago Hearing*, pp. 3–4.

62 Ibid., pp. 64–65. *See also* Lyne, written statement submitted at *Chicago Hearing*, p. 3–4.

63 *Cook County Hospital Subpoenaed Materials*, "Patients Seen at Cook County Hospital during Fiscal Year 1991 and their Racial/Ethnic Composition," and "Cook County Hospital: Race/Ethnicity of Inpatient Discharges."

64 Jeanette Sublett, Deputy Chief, Civil Actions Bureau, Office of the State's Attorney, Cook County Illinois, letter to Patricia Orloff Grow, Attorney-Advisor, U.S. Commission on Civil Rights, July 29, 1992; Ruth M. Rothstein, Hospital Director, Cook County Hospital, letter to Arthur A. Fletcher, Chairman, U.S. Commission on Civil Rights, July 17, 1992.

65 *Cook County Hospital Subpoenaed Materials*, "897–CCH–EEO/Race Ethnic Distribution."

66 *Cook County Hospital Subpoenaed Materials*, "Patients Seen at Cook County Hospital during Fiscal Year 1991 and their Racial/Ethnic Composition." According to this information, "no comparable data is available for users seen only as outpatients."

67 *Cook County Hospital Subpoenaed Materials*, "893—Ambulatory Outpatient Services."

68 Documents subpoenaed from Cook County Hospital indicate that the budget includes four staff interpreter positions, three Spanish and one Polish. However, one of the Spanish positions was vacant. *Cook County Subpoenaed Materials*, "Interpretive Services for Limited English Proficient Patients at Cook County Hospital."

69 *Thomson Letter*, p. 2.

7,256 of the contacts were for a Spanish interpreter, 2,150 for a Polish interpreter, and 291 for other languages.[70] During 1991, Hospital staff canceled 221 calls for an interpreter because they found someone else in the area to interpret, or a relative of the patient spoke the language. However, 116 requests for interpreters were unattended because of simultaneous calls.[71]

Due to a lack of health care interpreters, adult patients may often use their children as interpreters. Many parents regard this practice as degrading, demeaning, and potentially embarrassing. Furthermore, children are frequently taken out of school to serve as interpreters.[72] By one report, the nearest clerk, secretary, or janitor was used to translate for non-English speaking patients.[73] The Immigrant and Refugee Health Task Force found that many Chicago hospitals use personnel who are completely unschooled in the translation of medical terminology, and are expected to assume the additional interpretive duties without additional compensation.[74]

According to testimony, among 11 Chicago hospitals where the Immigrant and Refugee Health Task Force interviewed top administrators in 1988, not one had properly trained medical interpreters. Five institutions had a position of translator or interpreter, but provided no training, performance standards, or means of measuring the quality of these employees' translation services. Three hospitals had patient representatives who performed some interpretive functions. It was common practice to maintain a list of all employees who spoke a language other than English. Although the job duties of these employees might range from janitors to doctor, they were largely uncompensated for the extra work and could be penalized for time away from their regularly assigned duties. Only one hospital provided any orientation or formal training for employees with interpretive duties.[75]

Nine out of 10 of the hospitals did not know the cost of their interpreter or translation services, although each typically translated some consent forms and educational materials on health conditions, treatment, or home care into Spanish. Six hospitals claimed they used in-house Spanish-speaking staff to perform translations, which require the employee to leave other job duties. Three hospitals regularly contract with external translation services, and two have contracts for telephonic interpretive services.[76]

Very little bilingual medical materials were obtained from outside resource centers, despite the similarity in the materials that were translated by each hospital. Yet, when asked, 9 out of 10 of the administrators thought that a medically sanctioned clearing house for multilingual, multicultural health materials could provide educational materials. The administrators were also receptive to the development of a common pool of uniformly trained, linguistically and culturally competent medical interpreters, as long as the logistics were manageable and costs were not too high.[77]

Hospital policies varied on languages other than English. One hospital's admission policy stated the patients had the right "to complete information regarding diagnosis, treatment and prognosis in a language you understand." Two

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70 *Cook County Hospital Subpoenaed Materials*, "Interpretive Services for Limited English Proficient Patients at Cook County Hospital."

71 *Cook County Hospital Subpoenaed Materials*, "Multi-Lingual Service Statistic—1991, January 1st to June 30th, Unattended and Canceled Calls" and "Multi-Lingual Service Statistic—1991, July 1st to December 31st, Unattended and Canceled Calls."

72 Ibid., p. 33.

73 Coronado Testimony, *Chicago Hearing*, vol. 3, p. 22.

74 Ibid., vol. 3, p. 22.

75 Ibid., pp. 23–25.

76 Ibid., p. 25.

77 Ibid., pp. 25, 27.

other hospitals explain patient rights to language, particularly sign language, and how to obtain alternative communication. A fourth hospital merely recognized "immigrants and refugees" as a priority population. Another prohibited employees from speaking their native tongue in front of patients because it was discourteous.[78]

Clearly, efforts to provide interpreters and bilingual materials fall short of making health care fully accessible to limited-English-speaking groups. Witnesses at the Chicago hearing recommended mandating interpreter services in health care facilities and compensating employees who are required to provide interpretive services and training current and future health care personnel to perform interpreter services.[79] Pursuant to the Disadvantaged Minority Health Improvement Act of 1990,[80] the Office of Minority Health was established within the U.S. Department of Health and Human Services' Office of the Assistant Secretary for Health to assist in this area. Specifically, the Office must assist public and private providers of primary health care and preventive health services in obtaining the assistance of bilingual health professionals (including maternal and child health, nutrition, mental health, and substance abuse), in addition to establishing a national minority health resource center and developing health information and health education materials and teaching programs.[81]

Increasing Bicultural Sensitivity Among Staff

Cultural differences interfering with immigrants' access to health care range from their unfamiliarity with the medical system and the services provided in the United States, to a distrust of philosophies and interventions practiced in this country. On the other hand, medical practitioners' ignorance of folk remedies and practices among some immigrant groups sometimes lead to misunderstandings and an inability to successfully treat illness.[82]

The Chicago department of health recently created a position for a special assistant to the commissioner for Hispanic affairs to insure that programs and services are adequate and culturally sensitive to Hispanic patients.[83] The department also offers cultural diversity training at its clinics.[84] However, according to another witness, the department of health and the Cook County hospital system have done very little to sensitize existing staff to cultural issues. Training for cultural diversity was sporadic and not focused. Strategic planning to confront cultural or linguistic barriers to health care was nonexistent.[85] However, social work departments have tried to educate themselves on cultural issues and health care. Two such departments prepared seminars on Hispanic health issues for physicians and psychologists.[86]

Ms. Coronado, of the Immigrant and Refugee Health Task Force and director of volunteer services, Cook County Hospital, testified that training for cultural sensitivity should recognize the cultural values and traditions of groups from different Spanish-speaking countries and regions. Hospital personnel should acknowledge the effect of cultural nuances such as, some women are not comfortable in receiving medical examinations from a male doctor or with an interpreter present, or some patients from Southeast Asian countries may appear with bruises on their faces due to a

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78 Ibid., pp. 25–26.

79 Coronado Testimony, *Chicago Hearing*, vol. 3, pp. 28–29.

80 Disadvantaged Minority Health Improvement Act of 1990, Pub. L. No. 101–527, 104 Stat. 2311 (1990).

81 42 U.S.C. § 300u-6 (1993).

82 Coronado Testimony, *Chicago Hearing*, vol. 3, p. 22. *See* DeJesus Testimony, *Chicago Hearing*, vol. 3, p. 10.

83 Lyne, written statement submitted at *Chicago Hearing*.

84 Lyne Correspondence, p. 2.

85 Coronado Testimony, *Chicago Hearing*, vol. 3, p. 26.

86 Ibid., p. 27.

home remedy of coin rubbings, not from abuse and neglect.[87]

According to the director of Cook County Hospital, the facility is also concerned with assuring that patients can communicate with nurses, doctors, and other staff. As a result, they attempt to employ community residents.[88] But the hiring of medically trained professionals with a sensitivity to immigrant cultures is hampered by the severe shortage of such health care workers as "there are less than 1 percent Hispanic [registered nurses] in this whole country,"[89] Ms. Rothstein testified. She attributed the shortage of bilingual health care workers and health care professionals, more generally, to the failure of the government to train enough of them.[90]

Witnesses' recommendations to increase the number of professionally trained health care workers with bicultural sensitivity included increasing scholarships for minority students in the health care field[91] issuing grants for research on the needs of minority health professionals[92] expanding training programs for minorities for all health-related professions,[93] developing a program to prepare physicians from Latin American countries for the FLEX examination (an examination required for physician licensing) and for board certification[94] mandating that medical schools and educational institutions receiving Federal funds include minority faculty and other administrative staff in their training programs, and provide cultural sensitivity training.[95]

Increasing Minority Participation in Health Care Planning

As a means of increasing minority participation in health care planning, the 1989 Health Care Summit recommended that the Chicago Department of Health form community boards for each facility.[96] Each facility must have a health board with community residents representing at least 51 percent of its members to become a federally qualified health center. However, the facility health boards have had difficulty getting active members from disenfranchised people in minority communities.[97]

The Cook County Hospital system also has community advisory boards for all its clinics. Some of those that had been defunct for 5 or 6 years were recently reestablished. These boards allow community input into the planning process for delivery of ambulatory care services in needy areas.[98]

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87 Ibid., pp. 31–32.

88 Rothstein Testimony, *Chicago Hearing*, vol. 3, p. 84.

89 Ibid., p. 77.

90 Ibid.

91 Lyne Testimony, *Chicago Hearing*, vol. 3, pp. 65–66.

92 Ibid.

93 Ibid.

94 DeJesus Testimony, *Chicago Hearing*, vol. 3, p. 9.

Mr. DeJesus testified about the Physicians Review Program, which is subsidized by Alivio Medical Center. At the time of the hearing, 25 candidates were enrolled in this program. The program has had a 40 percent success rate in physicians passing their exams compared to a national rate of 18 percent and has placed five physicians in residencies in Chicago.

95 Lyne Testimony, *Chicago Hearing*, vol. 3, pp. 65–66.

96 Lyne Testimony, *Chicago Hearing*, vol. 3, pp. 67–68. *See Summit Report*, vol. 1, pp. 16–17.

97 Lyne Testimony, *Chicago Hearing*, vol. 3, pp. 67–68.

98 Rothstein Testimony, *Chicago Hearing*, vol. 3, p. 76.

Combating Epidemics Prevalent in the Minority Community

Witnesses at the Chicago hearing testified that minorities suffer disproportionately from certain conditions and diseases. For example, the incidence of infant mortality among minorities is almost double that for the general U.S. population.[99] In the Chicago area, particularly high rates of infant mortality are found in predominantly African American, Hispanic, and low-income communities on the city's south and west sides, and in clustered western and southern suburbs.[100]

Local officials testified that funds and effort are expended on addressing infant mortality, due to the high infant mortality rate in Illinois. But this is a social issue far broader than the medical problem that the hospitals or the department of health can address. Infant mortality, they implied, is related to other factors such as unemployment, lack of education, children having children, poor housing, and poverty,—issues that must be addressed on a national level. [101] The Chicago Department of Health recently hired an epidemiologist to examine medical records of approximately 900 infants who died in Chicago in the last year to identify whether the cause of high infant mortality rates is low birth weight or other factors.[102]

Moreover, a recent study by Dr. James Collins, a neonatologist from Children's Memorial Hospital provides additional insight into a cause of low birth weight babies among black women in Chicago.[103] According to Dr. Collins, chronic stress greatly contributes to the likelihood of a black woman giving birth to a low weight infant. As part of his research, he compared the birth weights of babies born to black women in safer communities with those born to black women who lived in more violent neighborhoods.[104] He found that despite similar education and income levels, women in unsafe neighborhoods were 60 percent more likely to give birth to a low birth weight infant. Dr. Collins also surmised that the effects of chronic stress from racism in employment, school, or communities cause American-born black women to have more low birth weight babies.[105]

Minority communities also face higher rates than the total population of heart disease, cancer, sexually transmitted diseases, and substance abuse. According to Dr. Young, these diseases account for 60 percent of the causes of death and morbidity in the minority community, which stem from social conditions and cultural and behavioral influences.[106]

Further, Dr. Young testified that infant mortality and other diseases will be reduced when the medical profession succeeds in reaching the minority community with culturally relevant educational materials, teaching sex education, advocating nutrition, and promoting the necessity of early prenatal care. He testified that health professionals have a lot of knowledge, but the community has the central role in overcoming substance abuse, sexually transmitted diseases, and other such health problems.[107] Additional resources must be brought to the community in the form of education and professional support.[108]

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99 Disadvantaged Minority Health Improvement Act of 1990, Pub. L. 101–527, 104 Stat. 2311 (1990).

100 *Summit Report*, vol. 2, Communities in Need, p. 6.

101 Rothstein Testimony, *Chicago Hearing*, vol. 3, pp. 98–99; Lyne Testimony, *Chicago Hearing*, vol. 3, pp. 99–100.

102 Lyne Testimony, *Chicago Hearing*, vol. 3, pp. 100–01.

103 Jean Latz Griffin, "Doctor Says Racism Plays Role in Black Babies' Low Birth Weight," *Chicago Tribune*, Mar. 23, 1994, p. 2.

104 Ibid.

105 Ibid.

106 Young Testimony, *Chicago Hearing*, vol. 3, pp. 34–35.

107 Ibid., pp. 35–36.

108 Ibid., p. 36.

Chapter 6. Access to Education

The opportunity to acquire a decent education is the foundation for personal development and economic security. The testimony of witnesses at the Chicago hearing and Commission analysis of subpoenaed documents reveal an improved public school system that is still failing its predominantly minority student population, particularly those with limited-English proficiency, and leaving them ill prepared for obtaining higher education or productive employment.

The Plight of Chicago's Public Schools

Desegregation Efforts

The history of public education in the city of Chicago has been marred by racial isolation. Black students have attended Chicago's public schools since public education began in 1837.[1] Although not initially segregated from white students, black students were not encouraged to attend schools. Compulsory attendance of black students was not enforced until after the race riot of 1919.[2] As the city of Chicago grew, so did its racial and ethnic representation. Hispanic immigration began approximately during World War I and increased significantly during World War II. More recently, Asian Americans and other groups have settled in Chicago and contributed to its rich racial, ethnic, and religious diversity. However, a pattern of neighborhood segregation based on these racial, ethnic, and religious identities developed. Eventually, the schools mirrored the longstanding segregation of its neighborhoods.[3]

The U.S. Department of Education's Office for Civil Rights found that the Chicago public schools had violated Title VI of the Civil Rights Act of 1964 by assigning students to schools on the basis of race and referred the case to the U.S. Department of Justice in October 1979.[4] On September 24, 1980, the Chicago board of education and the Department of Justice entered a consent decree in Federal district court in Chicago, which directed the board to develop a comprehensive student desegregation plan to "remedy the effects of past segregation on black and Hispanic students."[5]

The plan's primary objectives were to "1) establish the greatest practicable number of stably desegregated schools, and 2) to provide educational and related programs for schools remaining racially identifiable."[6] Following submission to and approval of the plan by the U.S. District Court for the Northern District of Illinois in January 1983, and extensive litigation on financing the desegregation plan, in July 1987 the U.S. district court replaced section 15.1 of the consent decree with a settlement agreement that served as the final determination of the funding obligation of the board and the Federal Government. Consequently, the Court ordered the Federal

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1 Robert L. Green, Lead Consultant, Student Desegregation Project, Board of Education, City of Chicago, *Student Desegregation Plan for the Chicago Public Schools: Recommendations on Educational Components*, p. 1 (hereafter *Student Desegregation Plan: Recommendations*).

2 Ibid.

3 Ibid.

4 Michael L. Williams, Assistant Secretary for Civil Rights, U.S. Department of Education, testimony, *Chicago Hearing*, p. 4 (hereafter M. Williams Testimony).

5 Ted Kimbrough, General Superintendent of Schools, *Student Desegregation Plan for the Chicago Public Schools: Annual Desegregation Review 1990-91, Part II: Recommendations on Educational Components*, Fall 1991, p. 21 (hereafter *Annual Desegregation Review, Part II*).

6 Ibid.

Government to pay the board $83 million for desegregation-related programs.[7] The court now oversees implementation of the consent decree.[8]

The Chicago public schools' department of equal educational opportunity programs, under the direction of the general superintendent of schools, is responsible for the implementation and monitoring of the Student Desegregation Plan, which utilizes a dual approach to school desegregation.[9] Student assignment strategies are utilized to maximize the physical desegregation of students, as well as components to eliminate the present effects of past segregation. The educational components include changes in educational programs, program delivery, and support mechanisms for students who remain in "racially identifiable schools," i.e., schools that are more than 85 percent African American and/or Hispanic.[10] These components also include a bilingual education component to preserve those gains made in implementing the bilingual education program and to improve the programs and services provided to limited-English-proficient children.[11] The primary mandate for this dual approach to school desegregation is section 2.2 of the consent decree which states:

> In order to ensure participation by all students in a systemwide remedy, and to alleviate the effects of both past and ongoing segregation, the plan shall provide educational and related programs for Black and Hispanic schools remaining segregated.[12]

The following programs implemented to address this mandate are: the Chicago Effective Schools Project ("designed to remedy the impact of racial isolation on minority student achievement through implementation of instructional and organizational strategies to ensure that all students acquire basic skills"); magnet-type schools without racial requirements (including Community Academies), magnet programs in predominantly minority schools, and racially identifiable schools participating in Project CANAL (Creating A New Approach to Learning).[13] Project CANAL, a 5-year program, was designed "to eliminate educational inequities and raise the achievement levels of minority students in racially identifiable schools."[14] The board of education of the city of Chicago is required to complete a comprehensive review of desegregation annually as required by the Comprehensive Student Assignment Plan submitted to the district court in January 1982.[15]

Witnesses at the Chicago hearing testified on the present failings of Chicago's public schools with respect to its predominantly minority student population. One witness observed that "70 percent of Chicago public schools inadequately prepare their students for high school. Forty percent of the elementary schools have more than half of their students reading below normal. The system's dropout rate hovers around 46 percent, with some inner-city schools reaching a dropout rate of almost 70 percent."[16] Another witness testified that Chicago has 31 high schools whose test

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7 *Annual Desegregation Review, Part II*, pp. 21–28.

8 M. Williams Testimony, *Chicago Hearing*, p. 5.

9 *Annual Desegregation Review, Part II*, pp. 17, 41.

10 Ibid., p. 17.

11 *Student Desegregation Plan: Recommendations*, p. 51.

12 *Annual Desegregation Review, Part II*, p. 17.

13 Ibid., pp. 41–43.

14 Ibid., p. 29.

15 Ibid., p. 15.

16 Gwendolyn D. Laroche, Director, Education Department, Chicago Urban League, written statement submitted at *Chicago Hearing*, p. 2.

scores on the American College Test were in the lowest 1 percent of all schools nationwide.[17] A Chicago Urban League analysis of Chicago's test scores indicates that black and Hispanic students have particularly low achievement levels;—for instance, roughly three-quarters of Chicago's black and Hispanic ninth-graders perform below the national norm, in comparison to under one-half of white and Asian American students.[18]

Over the years, Chicago's public school system has become increasingly populated by low-income and minority children. Historically, the change in racial and ethnic composition of the Chicago public schools is characterized by a steady decline in the proportion of white students and a significant increase in the proportion of Hispanic students. Black students, who have represented the majority in enrollment since 1966, have leveled off at approximately 60 percent. In 1990 black students numbered 236,914. [19] Between 1971 and 19 the number of Hispanic students in Chicago public schools almost doubled, growing from 56,374 to 110,707. As a proportion of all students, Hispanic student membership grew from under 10 percent in 1971 to 27.1 percent in 1990. The Hispanic enrollment in 1990 included 18.5 percent Mexican, 6.5 percent Puerto Rican, 0.2 percent Cuban, and 1.9 percent others.[20] The Asian American student population also grew considerably over the 20-year period, constituting 2.9 percent of the student body (11,994) in 1990. The number of white students in Chicago schools declined by three-quarters during same the time period, and the number of black students also declined, but by much less.[21]

According to one witness, 81 percent of Chicago's 410,000 students[22] are black or Hispanic, and almost 70 percent are poor.[23] She added:

> Many Chicago school children, like their counterparts in most large urban centers, have experienced multiple psychological, social, and intellectual insults to their development beginning at a very early age, even prenatally. The consequences of poor nutrition, stressful home and community settings, inadequate infant stimulation, neglect, and abuse render many children of poverty developmentally off-course in language development, in other aspects of intellectual development, and in social competencies before they even arrive in a classroom.[24]

Dr. Alfred Hess, a leader of Chicago's school reform movement, testified that such a large

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17 G. Alfred Hess, Jr., Executive Director, Chicago Panel on Public School Policy and Finance, testimony, *Chicago Hearing*, vol. 2, p. 269.

18 James H. Lewis, *Chicago's Two Public School Systems: Standardized Test Results Compared by Racial/Ethnic Group* (Chicago: Chicago Urban League, October 1990), p. 5.

19 *Annual Desegregation Review Part I*, pp. 18, 20. Black enrollment in the Chicago public schools comprised about 6.4 percent of total enrollment in 1930 (approximately 30,000), 11 percent (46,000) in 1940, 21.1 percent (74,000) in 1950. Black enrollment increased significantly to 39 percent (186,000) in 1960, and 46.5 percent (236,000) in 1963. Black enrollment has increased steadily until 1971 and has since declined gradually. Board of Education of the City of Chicago, *Comprehensive Student Assignment Plan*, Jan. 22, 1982, p. 11 (citing Robert J. Havighurst, *The Public Schools of Chicago: A Survey for the Board of Education of the City of Chicago* (1964)).

20 *Annual Desegregation Review, Part I*, p. 14; Board of Education of the City of Chicago, *Comprehensive Student Assignment Plan*, Jan. 22, 1982, p. 21.

21 *Annual Desegregation Review, Part I*, pp. 13–22.

22 Student enrollment in the Chicago Public Schools peaked in 1968 at 583,098. *Annual Desegregation Review Part I*, p. 13.

23 Laroche, written statement submitted at *Chicago Hearing*, p. 1. According to the Racial/Ethnic Survey of Chicago Public Schools, as of Sept. 28, 1990, of the total membership in the system, 58 percent is black, 27.1 percent Hispanic, 11.8 percent white, 2.9 percent Asian/Pacific Islander, and 0.2 percent American Indian/Alaskan Native. Ted D. Kimbrough, General Superintendent of Schools, *Student Desegregation Plan for the Chicago Public Schools: Annual Desegregation Review 1990–91, Part 1: Student Assignment Component*, Spring 1991, pp. 14–15 (hereafter *Annual Desegregation Review Part I*).

24 Laroche, written statement submitted at *Chicago Hearing*, p. 2.

percentage of Chicago students are "at-risk" students, that traditional educational approaches and Federal programs such as chapter 1 assistance, which are based on the assumption that at-risk students are a small minority of students in each school, are bound to fail:

All too frequently, the discussion of "at-risk" students proceeds from the assumption that these students exist at the margins of the regular student enrollment. . . . At Chicago's Austin High School, where the dropout rate for the Class of 1982 was 62.1 percent, only 18.4 percent of the entering ninth graders could read within a range which might be considered "normal" (above the 27th percentile nationally, or not more than two years below grade level). In 1985, the dropout rate increased to over 80 percent. In urban schools like Austin, where 54.2 percent of the students are from low income families, or nearby Crane, where 73.2 percent are low income students, "at-risk" students are not on the margins of the student body. They *are* the student body. And it may be argued, these students are rejecting, in massive numbers, the structures and performance of urban schools as being inadequate to meet their needs.[25]

He added that the problem facing Chicago is not just "at-risk" students, but "at-risk" schools.[26]

Compounding the problems facing Chicago, the schools are severely underfunded. Superintendent of Schools Ted Kimbrough testified that Chicago's per student expenditure was $5,537 (and $1,000 more in schools qualifying for Federal chapter I assistance), whereas per student expenditure in the State of Illinois generally ranged from $2,500 to $14,000. He noted that the density of poverty makes it much more costly to educate students in urban settings, such as Chicago.[27]

One result of underfunding is that many schools are dangerous and dilapidated. Dr. Gwendolyn Laroche of the Chicago Urban League testified:

Coming to and from school is fraught with danger for children in many neighborhoods, as gang warfare continues without cease, with the violence spilling over in the school buildings. . . . A disproportionate number of schools in the poorest neighborhoods are not only overcrowded but are also decaying, unsafe, substandard, and poorly maintained. It must be noted that many are without playgrounds or libraries. No one should be surprised to find that these demeaning circumstances in the schools have a devastating effect on students' attendance and achievement.[28]

She added that another major problem resulting from underfunding is the difficulty in recruiting good teachers:

[O]ur inner-city schools are faced with a most serious problem—the problem of providing motivated, knowledgeable, experienced, and skilled teachers for the classrooms throughout the city. . . . [W]e face extreme difficulty in the recruitment of teachers when suburban districts within a 30-mile radius can offer, for the most part, a better working environment and higher salaries; sometimes up to almost 40 percent higher.[29]

She noted that:

[W]e have an aging teaching force, many of whom are excellent, many [of whom] are not. The number of teachers over 60 years of age in the Chicago Public School System is twice that of teachers under 30. . . . As more and more teachers are lost to the system through retirement or resignations, we are left to depend upon low-paid substitute teachers who currently represent a quarter of Chicago's teaching force. Even substitutes are in short supply. On an average morning in Chicago, over 5,000 children in 190 classrooms may have no teacher.[30]

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25 Hess, written testimony submitted at *Chicago Hearing*.

26 Ibid., p. 1.

27 Ted Kimbrough, General Superintendent of Schools, Chicago Public Schools, testimony, *Chicago Hearing*, vol. 2, pp. 344–45.

28 Laroche, written statement submitted at *Chicago Hearing*, pp. 4–5.

29 Ibid., p. 5.

30 Ibid., p. 6.

Chicago's Experience with School Restructuring

Recognizing the deteriorated state of Chicago's system of public education, and noting, in addition, severe inequities in the distribution of educational resources in Chicago, many began to call for a major reform of Chicago's schools during the 1980s. This effort culminated with the December 1988 signing of the Chicago School Reform Act, which provided for a major restructuring of Chicago's school system. The act decentralized the system, placing much of the control of individual schools in the hands of "local school councils" consisting of elected representatives of parents, community members, and teachers, as well as the school's principal.[31] The Chicago school reform effort has been described as "one of the most radical school reform efforts in the United States."[32]

Testifying before the Commission, Dr. Hess, one of the primary architects of Chicago's school reform, described the inequities that were in part the stimulus for the school reform effort:

> The very kids who needed the most assistance were the kids who received the least resources. When we looked on a per pupil basis at expenditures in the schools, what we discovered was schools that had 90 to 99 percent low-income children received $400 less per pupil to spend on those children than did schools that had less than 30 percent low-income kids.[33]

He explained the underlying philosophy of the school reform effort:

> Refusing to blame the kids [for the problems of the schools], Chicago reformers decided it was the system which was failing the kids, rather than the kids who were failing the system. . . . The response of educational activists was an attempt to reform the entire Chicago Public Schools system rather than to try to provide special services to some kids.[34]

Witnesses at the hearing gave generally positive testimony on the early achievements of school restructuring in Chicago.[35] While acknowledging that it was too early to "fairly assess the impact of school reform on student achievement," and that "much, much more needs to be done if change is to occur in the way teachers and students interact," one witness testified that "the Chicago school reform effort has been successfully launched."[36] She listed some of the accomplishments of the school reform effort:

> Local school councils are functioning successfully for the most part. . . . Principals are clearly working harder (and longer) and taking on new roles . . . . Teachers are more involved and generally positive about school reform.[37]

In particular, witnesses cited progress in reallocating resources towards the neediest children:

> To date, we have moved significantly in that direction, so that, currently, schools that have 100 percent low-income kids now have $1,000 more per pupil to spend on those disadvantaged children than do schools that have less than 30 percent low-income children. We have

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31 For a history and analysis of Chicago's school restructuring, see G. Alfred Hess, Jr., *School Restructuring, Chicago Style* (Chicago: Corwin Press, 1991).

32 G. Alfred Hess, Jr., "School Restructuring, Chicago Style: A Midway Report," (Chicago: Chicago Panel on Public School Policy and Finance, Feb. 28, 1992), p. 1.

33 Hess Testimony, *Chicago Hearing*, vol. 2, p. 270.

34 Hess, written statement submitted at *Chicago Hearing*, p. 7.

35 *See* Hess Testimony, *Chicago Hearing*, vol. 2, pp. 264–72; Iva Lane, Director, Information and Advocacy, Chicago Panel on Public School Policy and Finance and Cochair, African American Educational Reform Institute, Testimony, *Chicago Hearing*, vol. 2, pp. 298–305; and Dan Solis, Executive Director, United Neighborhood Organization of Chicago, Testimony, *Chicago Hearing*, vol. 2, pp. 288–94.

36 I. Lane, written statement submitted at *Chicago Hearing*, pp. 2, 6.

37 Ibid., pp. 2–4.

moved a significant way in terms of providing resources in a more equitable way.[38]

Superintendent Kimbrough believed that a weakness of school reform was that by reducing funding for the central administration, it effectively eliminated central support for curriculum development, which, he said, was a very valuable resource for teachers.[39] Witnesses also testified that the local school councils sometimes do not effectively represent Latino parents. Dan Solis, a Hispanic community representative, spoke of "a kind of alienation, the kind of animosity" that persons who do not speak English feel with respect to the local school councils.[40]

The implementation of policies on a local level has become problematic with the transfer of substantial decisionmaking powers from a central administration to the local level. This becomes apparent in the implementation of Federal and State mandates in providing equal educational opportunities for limited-English proficient students as discussed below.

Educational Programs for Limited-English-Proficient Students

The U.S. Department of Education estimates that there are approximately 2.1 million school children in this country with limited-English proficiency, which can often result in failure in the classroom and dropping out of school.[41] As the enrollment of Hispanic and Asian American students has grown in the Chicago public school system, so has the need for educational programs to ensure equal educational opportunity to all limited-English-proficient (LEP) students.[42] An analysis of subpoenaed documents and hearing testimony demonstrated serious deficiencies in complying with Federal and State mandates, which is effectively denying these students equal educational opportunity to benefit from the educational programs offered by their schools.

At the time of the hearing, a total of 119 languages were spoken by students in Illinois schools, of which 109 (92 percent) were represented in the Chicago public school system.[43] The Chicago public schools had 49,160 limited-English-proficient (LEP) students, and 500 programs serving these students.[44] Of the 49,160 LEP students, 44,988 are in a transitional bilingual education program (TBE), and 4,172 in a transitional program of instruction (TPI).[45] The six largest LEP student groups by language were: 39,948 Spanish, 1,723 Polish, 693 Arabic, 617 Cantonese/Mandarin, 505 Vietnamese, 337 Korean.[46] The Chicago public schools had 1,663 bilingual education teachers and a bilingual education budget of $61.6 million (including local, State and Federal funds).[47]

Similar to other educational components of the Chicago public schools, the bilingual education component had been found in violation of title VI of the Civil Rights Act of 1964. In 1975, as a result of a compliance review, the Office For Civil Rights

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38 Hess Testimony, *Chicago Hearing*, vol. 2, pp. 271–72.

39 Kimbrough Testimony, *Chicago Hearing*, vol. 2, pp. 342–43.

40 Solis Testimony, *Chicago Hearing*, vol. 2, p. 295.

41 M. Williams Testimony, *Chicago Hearing*, p. 2.

42 "Students of limited English proficiency means students of non-English background whose aural comprehension, speaking, reading, or writing proficiency in English is below the average English proficiency level of students of the same age and/or grade whose first or home language is English." 23 IL.Adm.Code 228.10.

43 Illinois State Board of Education, Bilingual Education Section, Public School Bilingual Census Handbook, 1991, p. 24.

44 Chicago Public Schools, Department of Language and Cultural Education, Information Packet, April 1992.

45 FY92 TBE/TPI–LEP Students Served as of 1/31/92.

46 Chicago Public Schools, Department of Language and Cultural Education, Information Packet, April 1992.

47 Ibid.

(OCR) of the U.S. Department of Education revealed that the Chicago public schools violated title VI, regarding the provision of language services to non- or limited-English-proficient national origin minority students, by assigning faculty and staff on the basis of race.[48] OCR began enforcement proceedings in 1976, and in 1977 an administrative law judge found in OCR's favor.[49] To resolve the judge's findings, on October 12, 1977, the Chicago public schools entered into an agreement with the Office for Civil Rights of the U.S. Department of Education, as found in *Plan for the Implementation of the Provisions of Title VI of the Civil Rights Act of 1964*. Chapter III of the plan set forth specific goals and objectives to be met by the Chicago public schools with respect to its limited-English-proficient students.[50]

The Chicago Public Schools applied for assistance under the Emergency School Aid Act (ESAA) in 1978 and 1979. The school system was found ineligible partly due to its failure to implement certain provisions of the above-mentioned 1977 plan to serve limited-English-proficient students, and failure to provide them with procedural safeguards when assigning them to special education. During this process, OCR found that the Chicago public schools had violated title VI by assigning students to schools on the basis of race. As discussed above, the 1980 consent decree entered into by the Chicago Board of Education and the Federal Government also set forth requirements for the bilingual education program. The court now oversees implementation of the consent decree.

With respect to State mandates, the General Assembly of Illinois found that there were large numbers of children in Illinois who came from environments where the primary language is other than English. I addition public school classes in which instruction was in English only were inadequate for those children whose native tongue is another language. The General Assembly mandated Transitional Bilingual Education (TBE) Programs and Transitional Programs of Instruction (TPI) in the public schools, as well as providing supplemental financial assistance to the local school districts.[51] Public schools must provide a Transitional Bilingual Education Program when 20 or more limited-English-proficient students of the same language are enrolled in a school.[52] A student's program can be full- or part-time depending on the student's English proficiency, and must meet the standards set forth in the Illinois Administrative Code.[53] A school with 19 or fewer limited-English-proficient students of the same language must provide a Transitional Program of Instruction and must meet the standards of the Illinois Administrative Code.[54]

Each school district's compliance with the State Bilingual Education Mandate must be evaluated at least every 3 years by State board of education staff to determine compliance.[55] If deficiencies are cited, time is allowed for remediation, and if not

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48 M. Williams Testimony, *Chicago Hearing*, p. 4.

49 Ibid.

50 Chicago Public Schools, Board of Education of the City of Chicago, Joseph P. Hannon, General Superintendent of Schools, *Plan for the Implementation of the Provisions of Title VI of the Civil Rights Act of 1964, Plan For Bilingual Education*, Oct. 12, 1977.

51 Ill. Ann. Stat. ch. 105, § 5/14C-1 (Smith-Hurd 1993).

52 Ill. Adm. Code tit. 23, § 228.10.

53 Ill. Adm. Code tit. 23, § 228.10, 228.30(a).

54 Ill. Adm. Code tit. 23, § 228.10, 228.30(b).

55 Ill. Adm. Code tit. 23, § 228.10, § 228.60 (a).

corrected, the State board of education may disallow funding for that school's bilingual program.[56]

The Chicago public schools department of language and cultural education, established in 1989–90 as part of educational reform initiatives, manages State and federally funded programs serving language-minority students, particularly those with limited-English-proficiency. The department administers the State mandated Transitional Bilingual Education Program and supports cultural awareness and world (foreign) language programs in the public schools.[57] The department, in conjunction with the Illinois State Board of Education, has developed procedures for implementing bilingual education programs. Such procedures include student identification, assessment, placement, bilingual program exit criteria, and other required components of the State mandated Transitional Bilingual Education Program.[58]

However, a new bill has been viewed by some as an effort to avoid the State's obligation of providing bilingual education. On February 27, 1995, Governor Jim Edgar signed Senate Bill 22 (the waiver bill) which permits a school district to obtain waivers from certain Illinois school code mandates, if the petitioning district can demonstrate that it can satisfy the intent of the requirement in a more efficient, effective, or economical manner.[59] The waiver bill allows a school district to choose those School code requirements that reflect the needs of the locality, but cannot eliminate special education programs, and teachers' seniority or tenure mandates. In contrast, bilingual education programs are potentially subject to a district's request for a waiver.[60] As a result, according to the lead counsel of the Chicago office of the Mexican American Legal Defense and Educational Fund (MALDEF), the waiver bill violates the Federal Equal Educational Opportunities Act, as well as the consent decree that required the Illinois State Board of Education to revise bilingual education regulations.[61]

In addition, a recent Federal act is scheduled to take effect on July 1, 1995. The "Improving America's Schools Act of 1994" authorizes the Secretary of Education to provide grants to expand or enhance existing bilingual education programs for limited-English-proficient students.[62] Specifically, the grants may be used for in-service training for teachers or other community-based personnel, outreach activities, language resource materials, compensating specially trained teacher aides, and tutorials.[63] As a result, it is uncertain whether local Illinois school districts with existing bilingual programs will request grants available through the Improving America's Schools Act, or choose to eliminate bilingual education by the waiver bill.

Deficiencies in the Provision of Educational Services to LEP Students

A key responsibility of the department of language and cultural education is to "provide technical assistance to school administrators, Local School Council, bilingual advisory committees,

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56 Chicago Public Schools, *Implementation Handbook, Bilingual Education Programs in the Elementary Schools* (1988), p. 64. Five Chicago public schools had their funding withheld due to noncompliance. In 1992 Dr. Serna was trying to recoup these funds. Dr. Rodolfo Serna, Assistant Superintendent, Department of Language and Cultural Education, interview in Chicago, IL, May 18, 1992.

57 Chicago Public Schools, Department of Language and Cultural Education, Information Packet, April 1992.

58 Ibid.

59 S.B. 22, 89th Gen. Assembly, 1995-96 Reg. Sess., 1995 Illinois Laws.

60 V. Dion Haynes, "Schools Find Mandate-Cure Wrapped in Red Tape," *Chicago Tribune*, Feb. 21, 1995, p.1.

61 Melita Marie Garza, "Bilingual Bill Called Unconstitutional; Suit Threatened if Legislation O.Ks Dropping Program," *Chicago Tribune*, Feb. 7, 1995, p. 4.

62 Improving America's Schools Act, § 7113, 108 Stat. 3518 (1994).

63 Ibid. at § 7113 (b)(2)(B).

and teachers to ensure their program compliance with state and federal laws and Board policies."[64]

Maria Seidner, the State of Illinois official responsible for enforcing the State bilingual education mandate, testified:

> Being such a large system, I think there are a lot of schools that do not comply with the requirements, and we go and we monitor and we work through all of the persons at the local level as well as at the district level and at the central office level to insure that a school takes the necessary steps to come into compliance. And we make great gains, and while we're making gains in one place, we're losing out in other places because there have been changes again in local school personnel and local administrators who do not understand the purpose of the program, and we almost have to start all over again in other situations. So it's a dynamic process which we are all eager to continue to see if maybe we can take five steps forward and only two backwards instead of, sometimes we seem to make process and then go back almost an equal amount in other areas.[65]

Commission analysis of documents subpoenaed at the time of the Chicago hearing reveals that of the 300 schools implementing bilingual education programs in the Chicago public schools,[66] the department of language and cultural education conducted only 81 program compliance review visits in 1990 (27 percent of the existing programs); 119 program compliance review visits were conducted in 1991; 100 conducted as of the time of the Chicago hearing in 1992; and 5 were conducted but undated.[67] The department of language and cultural education Department has an insufficient number of staff members—only five "facilitators"—to conduct program compliance reviews.[68]

The program compliance review reports from 1990–1992 revealed serious deficiencies within the Chicago public school's transitional bilingual education programs, indicating lack of compliance with the applicable laws and consent decree. Examples of the most common deficiencies uncovered are described below. Commission analysis revealed that in many schools the home language surveys (to identify students of non-English background) and individual English language assessments were not administered to all students or properly administered by bilingual school personnel, as required by Illinois Administrative Code title 23, section 228.20.

In many schools, high numbers of LEP students, particularly Spanish students, were not receiving any services. For example, in one school, many fourth and eighth grade students (128) were not receiving needed bilingual services; in another school 121 Spanish LEP students were not receiving services; 108 Spanish LEP students were not receiving bilingual services in another school; 87 Spanish LEP students were not receiving a full- or part-time bilingual program and enrolled in English-only classes in another school. In other language groups, 26 students were not receiving Cantonese full-time bilingual programs in one school; 28 Polish LEP students were not receiving services in a high school; no required Polish bilingual program was in place in a different school; and no Arabic program existed in another school.

The facilities for transitional bilingual education programs were also inferior to the general education programs and not conducive to learning. For example, in one school the bilingual pull-out classes were conducted on a second floor landing in the school. In another school, the Spanish students' classroom was shared with the gym teacher. In another school, the transitional bilingual education programs for Cantonese students were conducted in a gym, corridor, or book room.

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64 Chicago Public Schools, Department of Language and Cultural Education, Information Packet, April 1992.

65 Maria Medina Seidner, Manager, Bilingual Education Section, testimony, *Chicago Hearing*, vol. 2, pp. 352–53.

66 Chicago Public Schools, Department of Language and Cultural Education, Information Packet, April 1992.

67 Chicago Public Schools, Department of Language and Cultural Education, Program Compliance Review Reports, 1990–1992.

68 Dr. Rodolfo Serna, Assistant Superintendent, Chicago Public Schools, Department of Language and Cultural Education, interview in Chicago, IL, May 18, 1992; Chicago Public Schools, Department of Language and Cultural Education, *Information Packet*, April 1992.

The student-teacher ratio for transitional bilingual education programs are exceedingly high in many schools. Normally, the student-teacher ratio in such program should be 25:1. It was found that in one elementary school, the student teacher ratio for the Russian program was 92:1 (only one teacher serves 92 program students). In another elementary school, the student teacher ratio was 50:1.[69] Other common deficiencies were a lack of bilingual instructional materials, the failure to use general text book funds to purchase appropriate native language and English as a Second Language ("ESL") instructional materials, and the use of funds to supplement rather than to replace purchasing instructional materials for the bilingual education program.

The frequent use of uncertified bilingual or ESL teachers was another significant problem uncovered by Commission analysis of program compliance review reports. For example, in one school a "non-endorsed/approved" bilingual Spanish teacher does not know how to write Spanish, and in another school a "non-endorsed" Spanish teacher is not able to provide instruction in Spanish. Analysis of documents subpoenaed at the time of the Chicago hearing reveals that of those teachers in the Chicago public schools bilingual program:

2,011 teachers had required State bilingual/ESL approval;

147 teachers did *not* have the required State bilingual/ESL approval, of which 108 (74 percent) were board of education funded positions for the "More-than-20" student programs. Specifically, of these teachers lacking the requisite State bilingual/ESL approval, 68 (46 percent) teach Spanish, and 23 (16 percent) teach Polish;

165 teachers in the bilingual program had no designated teaching language. The majority of these teachers (148) were in State funded, Supplemental Bilingual or ESL positions for the "More-than-20" students program;

12 teachers approved for *ESL* programs were in a *bilingual* position, 8 (67 percent) were teaching Spanish, (4 positions were State funded and 4 were Board funded for the "More-than-20" student programs, 3 were funded through other government funded sources, and 1 was State funded from the "fewer-than 20" student program);

10 bilingual approved teachers were in an *ESL* position teaching English as a second language;

39 vacancies, (of which 27 (69.2 percent) were vacant Spanish teaching positions, and 19 of these (49 percent) were board funded for the "More-than-20" student program, and 7 (18 percent) were State funded for the "More-than-20" student program.[70]

Dr. Rodolfo Serna, assistant superintendent for the department of language and cultural education, admitted that some bilingual positions were being filled by nonbilingual personnel.[71] Maria Medina Seidner, manager of the bilingual education section of the Illinois State Board of Education, testified that this is due in large part to "the local [school] administrator's failure to announce that vacancy—to keep a local teacher who may not be bilingual but who has been in that school for a while in a position, rather than bringing in staff required by the mandate and by the change in [the] demographics of the enrollment of those schools."[72]

When questioned about the city's efforts to recruit certified bilingual teachers, Mr. Serna testified about efforts being made by his office with the division of recruitment and certification

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69 The student-teacher ratio in ESL and native language components of programs shall not exceed 90 percent of the average student-teacher ratio in regular classes in that school. ILL.ADM.CODE tit. 23, § 228.40(b)(4). See also the agreement between the board of education of the city of Chicago and the Chicago Teachers Union, Local No. 1, American Federal of Teachers, AFL–CIO, 28-2.1-28-4, Sept. 1, 1990–Aug. 31, 1993.

70 Chicago Public Schools Payroll Personnel System, Bilingual Program Position Report (report no. PQ-898), 6/10/92.

71 Dr. Rodolfo Serna, Assistant Superintendent, Chicago Public Schools, Department of Language and Cultural Education, testimony, *Chicago Hearing*, vol. 2, p. 346.

72 Seidner Testimony, *Chicago Hearing*, vol. 2, p. 351.

in the office of human resources to recruit bilingual teachers from Mexico and Puerto Rico, and at bilingual conferences across the country, as well as by working with local universities.[73] Dr. Serna testified:

> We are currently working with universities to develop programs to identify these folks, who may be here, but because they lack the certification for an Illinois teacher's license or English language skills, they may not be able to participate.[74]

Although faced with the ever-growing shortage of certified bilingual teachers, particularly certified Spanish bilingual teachers, efforts to recruit qualified bilingual teachers has been ineffective and sporadic despite a flexible certification process. Ms. Seidner testified:

> We have a very flexible certification process which allows the professionals from other countries [who] do not have teaching credentials but who have a degree and who are prepared to take an exam in English, basically to become a teacher without any formal teacher preparation, which in some ways is good, and in some ways is not good. We get the professionals there, but if it's a professional who has not had a lot of training on how to work with children, then we do need to have a great deal of staff development and in-service [training] for these teachers, which I don't think we have enough of in the Chicago public schools.[75]

Ms. Seidner elaborated:

> We have a . . . two-step certification process. One is a provisional, . . . emergency procedure, which allows us to have access to qualified teachers from other States, other countries, as well as the individuals that I mentioned earlier, professionals who might be qualified to teach. That is called a transitional bilingual certificate, and its only requirements are that the individual, in addition to being legally present in the United States, and all those issues, has a certificate or holds a valid teaching certificate from any other country or any other State or territory, and passes a language proficiency test. . . . This certificate is good for 6 years. During that time it is expected that the individual will fulfill the requirements for a standard Illinois teaching certificate, and also, for a permanent approval to be a bilingual teacher. The certificate can be extended for a 2-year period after the six. . . so in fact it is an 8-year period that the individual has to get a degree, to get whatever requirements that individual would need to get an elementary teacher's certificate or a secondary teacher's certificate, and to take the 18 hours of required course credit to be a bilingual teacher.[76]

She added that the State of Illinois was assisting in Chicago's efforts to recruit teachers directly from abroad by allowing certification examiners to accompany recruiters and certify potential teachers in their own countries, rather than bringing them back to Chicago to undergo the certification process and possibly be rejected:

> We support, for example, the effort to recruit in Puerto Rico and in Mexico. . . . One of the things that we did was rather than to go there and recruit and then bring them over here and then submit them to certification testing and all of their requirements and then say, "Sorry, you're not qualified," and then have them go back, our certification department allowed the certification examiners to accompany the recruiters so that all that could be done on-site, and so that when the teachers were in fact told, "Yes, you're qualified, we want you to come," they were qualified, and they knew that they had a job here waiting for them.[77]

Carlos Heredia, a Hispanic community leader, raised specific concerns about the provision of educational services to LEP students, and to Hispanic students in general. He emphasized a general underrepresentation of Hispanics among the teaching and administrative staffs of schools. Comparing the representation of different

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73 Serna Testimony, *Chicago Hearing*, vol. 2, pp. 347–49.

74 Ibid., p. 347.

75 Seidner Testimony, *Chicago Hearing*, vol. 2, pp. 353–54.

76 Ibid., pp. 360–62.

77 Ibid., p. 353.

racial/ethnic groups among students with their representation among staff, Mr. Heredia testified that 28 percent of the student body was Latino, but only 9 percent of staff. In contrast, he noted that whites were overrepresented among staff, comprising 37 percent of staff and only 12 percent of the student body, and blacks were slightly underrepresented, comprising 52 percent of the staff and 58 percent of the student body. Commenting that "the Latino community has been the one group that has been increasing on a continuous basis, year in and year out," he maintained that "hiring, unfortunately, has lagged behind."[78] This testimony is supported by data obtained by the Commission. At the time of the Hearing, the racial/ethnic background of the Chicago public schools staff was: white 16,841 (36.4 percent), Hispanic 4,517 (9.8 percent), Asian 681 (1.5 percent), American Indian 39 (0.1 percent), and black 24,179 (52.3 percent).[79] However, student enrollment was: 48,367 (11.8) percent white, 110,707 (27.1 percent) Hispanic, 11,994 (2.9 percent) Asian, 732 (0.2 percent) American Indian, and 236,914 (58 percent) black.[80]

Another problem uncovered was that the talents of students with limited-English proficiency can be overlooked or ignored if the students do not speak English. At the time of the Chicago hearing, 24,769 students participated in the gifted/talented program in Chicago public schools during FY 92.[81] However, Dr. Rodolfo Serna testified that there was only one active gifted and talented program for gifted LEP students, the Gifted LEP Center at Orozco Community Academy.[82] As of October 1, 1991, 107 LEP students were enrolled in grades 1 through 6 at Orozco; 30 (22 percent) of the candidates did not enroll due to transportation problems; and 12 vacancies were identified.[83] Staffing included three bilingual teachers and one bilingual substitute teacher. Projected LEP student enrollment for 1993–94 was 239 students for grades 1 through 8.[84]

Testimony at the Chicago hearing also raised concerns that schools were not taking sufficient steps to provide accurate information to Hispanic parents. Carlos Heredia, executive director of Por Un Barrio Mejor, testified:

> The efforts by local administrators and principals are not sufficient to orient parents as to what are the advantages of bilingual education to students who don't speak the language. I don't think that happens often enough or to the extent that it should happen.[85]

Commission analysis of program compliance reviews of local public schools revealed that often report cards for students enrolled in a bilingual program were not written in the student's home language and English, in violation of Illinois Administrative Code title 23, section 228.40(f). Ms. Seidner testified that the problem of English-only notices has contributed to improper and illegal exits of children from bilingual education programs in Chicago schools.[86] She indicated that principals have sent notices, (written in English), home with limited-English-proficient students, and required the non- or limited-English-speaking parents to sign forms that were used as their

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78 Carlos Heredia, Executive Director, Por Un Barrio Mejor, Testimony, *Chicago Hearing*, vol. 2, pp. 282–83.

79 Chicago Public Schools, *Racial/Ethnic Survey: Staff*, Oct. 31, 1991.

80 *Annual Desegregation Review*, Part I, p. 15.

81 City of Chicago School District 299, FY92 Gifted Education Program Evaluation Report.

82 Serna Testimony, *Chicago Hearing*, vol. 2, p. 407.

83 Chicago Public Schools, *Programs For Gifted Limited English Proficient (LEP) Students, Progress Report*, Oct. 1, 1991.

84 Ibid.

85 Heredia Testimony, *Chicago Hearing*, vol. 2, pp. 313–14.

86 Seidner Testimony, *Chicago Hearing*, vol. 2, p. 369.

parental consent to withdraw their child from the bilingual program.[87] According to the Illinois Administrative Code, a parent or legal guardian can withdraw his or her child from a bilingual education program within 30 days of receipt of a notice of enrollment, or at the close of any semester, by submitting a written request for withdrawal to the school district authorities.[88] However, withdrawal shall not be permitted unless the parent or guardian has been informed of the nature of the program in a conference with school officials. Moreover, the conference must be conducted in a language that the parent or legal guardian understands.[89]

Commission analysis of program compliance reviews revealed that a considerable number of students are being taken from transitional bilingual education programs who do not meet program exit criteria, in violation of Illinois Administrative Code title 23, section 228.40(f). A limited-English-proficient student shall remain in a bilingual education program for a period of 3 years, or until the student achieves a score on the annual examination that meets the exit criteria.[90] However, a student may remain in the program longer than 3 years at the discretion of the school district and subject to the approval of the student's parents.[91]

The total number of Chicago public schools students leaving transitional bilingual education programs for 1990-91 was 12,493.[92] These included: 6,523 students (52 percent) who were exited for lack of parental permission to continue in the program beyond 3 years,[93] and 2,555 (20.5 percent) who were transitioned into the general program.[94] The assistant superintendent of the department of language and cultural education testified that the 3-year target was established by his office as a goal for when students should be able to exit bilingual programs and enter mainstream classes, although some administrators may mistakenly believe that it is a requirement. As a result, students automatically leave the program after 3 years, whether or not they have met the exit criteria.[95]

Enforcement Efforts of the Office for Civil Rights

As discussed above, the U.S. Department of Education's Office for Civil Rights (region V) enforcement efforts to ensure equal educational opportunities for limited-English-proficient students in the Chicago public schools were most visible in the 1970s. Some of these issues are within the jurisdiction of the Federal District Court, which oversees implementation of the consent decree. Complaints regarding compliance with the consent decree's requirements or services

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87 Ibid.

88 23 Ill.Adm.Code 228.40(a)(2).

89 Ibid.

90 Ill. Adm. Code tit. 23, § 228.40(f)(a)(4)(A). When a student meets the exit criteria based on performance, the student is exited as follows: (1) Unconditional exit: student performance at or above Stanine 5 (40th–60th percentile) on the Test of Achievement and Proficiency (TAP) for high school students and on the Iowa Test of Basic Skills (ITBS) for elementary school students; (2) Conditional exit: student performance at the upper half of Stanine 4 (30th–39th percentile) on the Test of Achievement and Proficiency (TAP) for high school students and on the Iowa Test of Basic Skills (ITBS) for elementary school students and the bilingual/ESL program lead teacher and other bilingual teachers who are in daily contact with student strongly recommend student's exit from program. Chicago Public Schools, Department of Language and Cultural Education, *Information Packet*, April 1992.

91 Ill. Adm. Code tit. 23, § 228.40(f)(a)(4)(B).

92 Illinois State Board of Education, *Annual Report, Charting the Course for the 21st Century*, January 1992, p. 26.

93 It should be noted that permission may have been granted at a later date and the students may have reentered the program.

94 Ibid.

95 Serna Testimony, *Chicago Hearing*, vol. 2, pp. 370–71.

to limited-English-proficient services should be forwarded by OCR to the Department of Justice.[96]

In general, OCR is responsible for complaint investigations, compliance reviews, monitoring, and technical assistance. At the time of the hearing, region V had received over 1,600 complaints, 70 (4 percent) had been filed against the Chicago public schools.[97] Of these 70 complaints, 28 percent alleged discrimination on the basis of race, color, or national origin; 6 percent alleged sex discrimination; 53 percent alleged disability discrimination; and the remainder alleged other bases.[98] Few of these complaints of race or national origin discrimination have raised issues relating to student services.[99] None have included charges of racial harassment. One alleged discrimination in administering discipline, and one complaint alleged discrimination in the provision of language services to limited-English-proficient students.[100]

Most complaints of discrimination against students pertained to assignment to certain schools or programs, and OCR did not find evidence of discrimination.[101] OCR's investigations of a number of complaints alleging discrimination on the basis of sex or disability have resulted in findings of violations and development of corrective action plans by the Chicago public schools.[102]

At the time of the hearing, OCR was also monitoring the Chicago public school's compliance with a 1989 settlement plan to resolve OCR's finding that Spanish-speaking disabled students were not being provided with speech and language services to address their limited-English proficiency and individual needs. The Chicago public schools agreed to implement the necessary steps to provide bilingual speech and language pathologists to students in need of such services. This was being monitored in conjunction with the provision of speech and language services to disabled students.[103]

OCR identifies sites for compliance reviews on the basis of information from a wide variety of sources, such as community members, the media, and Federal and State agencies. The OCR's Regional Director, however, was generally unaware of the present deficiencies in services to limited-English-proficient students in the Chicago public schools addressed at the Chicago hearing. He testified that he has received very few complaints regarding monolingual teachers in bilingual teaching positions.[104] The Director also testified that he had no knowledge of problems of written notices not being provided in the parents' home in Chicago public schools.[105]

At the time of the hearing, the most recent compliance review of the Chicago public schools focused on the timeliness of evaluation and placement of disabled students.[106] OCR initiated administrative proceedings, which resulted in a finding in their favor in July 1989. The Chicago public schools submitted an acceptable settlement

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96 Kenneth A. Mines, Regional Director, Region V, Office for Civil Rights, U.S. Department of Education, testimony, *Chicago Hearing*, vol. 2, p. 357.

97 M. Williams Testimony, *Chicago Hearing*, p. 5. Nationally, OCR received 169 complaints regarding services to limited-English-proficient students, out of a total 16,668 complaints during the 5-year prior to the Chicago hearing. Ibid., p. 2.

98 Ibid.

99 M. Williams Testimony, *Chicago Hearing*, p. 5.

100 Ibid.

101 Ibid.

102 Ibid., p. 6.

103 M. Williams Testimony, *Chicago Hearing*, p. 5.

104 Mines Testimony, *Chicago Hearing*, vol. 2, p. 357.

105 Ibid., p. 378.

106 M. Williams Testimony, *Chicago Hearing*, p. 6.

agreement that provided that special education staff will include teaching experts and experts in social work, guidance, and psychology professionals who have experience with disabled and limited-English-proficient students.[107]

Racial Tensions in Chicago's Schools

Racial and ethnic tensions that exist in the city's neighborhoods are often reflected in its schools. Testimony at the Chicago hearing addressed black-Latino tensions in the Chicago public school system:

> The tensions, racial tensions, vary from level to level and from school to school. Let me just give you an example . . . Farragut High School is located in the community where our organization works. It is approximately 70 percent Latino and 30 percent black. There are fights on a regular basis. There is a lot of tension in that school, not only between students, but also between teachers.[108]

The department of language and cultural education provides multicultural awareness initiatives, such as the development of a resource packet for local schools that contains multicultural education policies and practices, materials for use in the classroom, and strategies for developing multicultural education projects and programs.[109] Staff is also available to provide staff development and information sessions. The department also supports and endorses "A World of Difference Program" designed to reduce racial, ethnic, and religious discrimination. The program is coordinated by the Chicago regional office of the Anti-Defamation League, and is funded by the Arthur Rubloff Charitable Trust with support of the Chicago Urban League and Fox/channel 31.[110] Carlos Heredia was critical of the schools board's efforts to overcome these problems of racial and ethnic tensions:

> The unfortunate thing is that the Board of Education has not really addressed the issue of Farragut High School very adequately. We all know that for years Farragut High School has been a place where tension between blacks and Latinos runs very, very deep. I have not seen any real programs to address that specific problem. There are a number of programs on a very small-scale basis that are beginning to address the overall situation at Farragut High School, but, by and large, they are very small in scale, and they are very inadequate. The typical reaction to an incident of violence is, let's call the Chicago Commission of Human Relations, and let's have them provide workshops for the students and for the teachers, and let's learn how to get along with each other. . . .
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> There was a task force that was put together, made up of community organizations, parents, and teachers, and we met for over a year. We sent our recommendations to the school administration, and unfortunately, very, very few of them were even paid any attention to. So racial tensions are a problem in the City of Chicago and in schools, but unfortunately, I don't think the Board has a program or a plan to adequately address these issues.[111]

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107 Ibid.

108 Heredia Testimony, *Chicago Hearing*, vol. 2, pp. 284–85.

109 Chicago Public Schools, Department of Language and Cultural Education, *Information Packet*, April 1992.

110 Ibid.

111 Ibid., pp. 285–86.

Chapter 7. Employment and Training Programs in Chicago

Job training is a means of increasing employment opportunities for those workers who are not prepared for available jobs. Two witnesses at the Chicago hearing described welfare and educational system program factors that discourage some disadvantaged and minority persons from seeking or benefiting from the job training that enables them to find employment. For example, James H. Lewis, director, department of research and planning, for the Chicago Urban League, testified:

> [A]t both the State and national levels, there must be a fundamental rethinking of the entire process of welfare to work, and how job training and welfare programs operate to facilitate it. In Illinois, more than 40,000 recipients of general assistance are on the verge of having their benefits entirely eliminated. Although the Governor and State will do this . . . because of fiscal pressure, [the] rationale is . . . that . . . these individuals are able-bodied [and] will find work if only pressured by the complete lack of income.[1]

Esther Lopez, director of the immigrant community services division of Travelers and Immigrants Aid in Chicago, alleged that vocational schools and community colleges have minimal Latino enrollments and have failed to educate and train Latinos to participate fully in today's labor market.[2] Most witnesses, however, offered criticisms of the existing Federal job training program.

The Job Training Partnership Act (JTPA)

The Job Training Partnership Act (JTPA)[3] is the primary Federal program for job training needs. Through this act, initiated in October 1983, the Federal Government funds job training and related employment services to economically disadvantaged persons who lack job skills. By statute, 90 percent of JTPA participants must be economically disadvantaged. The remaining 10 percent, if not disadvantaged, must face barriers to employment, such as limited-English proficiency, having a criminal record, alcoholism, drug addiction, lack of a high school diploma, teenage parenthood, or homelessness. The major services JTPA offers are job search assistance, job counseling, classroom training in remedial education, basic skills or vocational training, and on-the-job training (OJT).

The administrative structure of JTPA assigns the responsibility for administering the federally funded program to States and localities such as the city of Chicago. It emphasizes input from private business in partnership with local and State elected officials.

Both community witnesses and city officials raised concerns about the program. These issues ranged from the nature and effects of the public/private partnership design of the program, to the types and length of training and resulting jobs. In addition, they maintained that the program was characterized by a lack of support services for participants, inaccessible services for those with limited-English proficiency, and administrative difficulties of too few funds, overly restrictive eligibility criteria, and burdensome paperwork.

Overview of Job Training in Chicago

In Chicago, the mayor's office of employment and training (MET) is the local grant recipient under the JTPA. Chicago is the largest service

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1 Lewis Testimony, *Chicago Hearing*, vol. 3, p. 133.

2 Lopez Testimony, *Chicago Hearing*, vol. 3, p. 108.

3 29 U.S.C. § 1501 *et seq.* (1988).

delivery area in Illinois and one of the largest in the JTPA system.[4] Illinois ranks among the top States in the U.S. in terms of JTPA allocations, and approximately 35 percent of Illinois' resources are allocated to Chicago. MET has adopted a decentralized model of operation, and relies on service providers of approximately 100 community-based organizations.[5]

Since JTPA's inception, over 90 percent of the participants enrolled in Chicago's JTPA-funded job training programs are minorities. In 1991, of the 29,715 persons enrolled in any of the programs administered by MET: 20,125 (67.7 percent) were black, 6,145 (20.7 percent) were Hispanic, 2,168 (7.3 percent) were white, 1,223 (4.1 percent) were Asian, and 54 (.2 percent) were Asian.[6] Most of the financial resources were expended on behalf of residents on the city's south and west sides, areas with the highest concentration of poverty and unemployment.[7]

Public/Private Partnership

JTPA is designed to encourage a public and private partnership. By statute, a local elected official appoints representatives of businesses, educational agencies, economic development agencies (and other groups specified in the legislation) to be members of a private industry council (PIC).[8] The extent and type of PIC activity is largely self-determined. But, these private-sector representatives are intended to link local training programs with economic development opportunities and strategies, coordinate job training with outreach to other businesses, and help plan job training and employment service programs. One witness claimed that the partnership was intended to minimize the need for Federal funding of public employment services.[9]

The public/private partnership of JTPA and whether it was achieving its purpose or was having adverse effects on training participants was an issue raised at the hearing. Mary Gonzalez Koenig, director of the mayor's office on employment and training (MET), suggested that both private sector businesses and unions need to be more involved in order to relate employment requirements to the training JTPA participants receive and to get employers to commit to training people for their work force.[10] Another witness alleged that the public/private partnership emphasis of the program resulted in fewer job placements for the hard-core unemployed.[11]

Types of Jobs

Because technological changes make some types of jobs obsolete while creating new employment opportunities, public monies are most effectively directed toward training for industries or jobs that are experiencing growth. To ensure that the Department was not funding "programs in obsolescence for jobs that were not going to be there." Director Koenig testified, research was coordinated through the city of Chicago, Northwestern University's research division and Chicago United. The project predicts the effect that varying employment markets will have on creating entry level jobs. This study is used for funding allocations and determining occupations

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4 Mary Gonzalez Koenig, Director, Mayor's Office of Employment and Training, written statement submitted at *Chicago Hearing*, vol. 1, p. 1.

5 Ibid.

6 Documents produced pursuant to Commission subpoena duces tecum from Mary Gonzalez Koenig, Mayor's Office of Employment and Training, June 26, 1992.

7 Koenig, written statement submitted at *Chicago Hearing*, p. 2.

8 Ibid., § 1512 (a).

9 Lewis Testimony, *Chicago Hearing*, vol. 3, p. 133.

10 Gonzalez Koenig Testimony, *Chicago Hearing*, vol. 3, p. 194.

11 Lewis Testimony, *Chicago Hearing*, vol. 3, p. 133.

for available job training. The research is updated every 5 years.[12]

For example, a May 1991 study assessed employment opportunities for Chicago residents through 1995.[13] The research showed that certain occupations, which require more than a high school diploma but fewer than 4 years post-secondary training, appear to represent the most significant opportunities for upward economic mobility for lower income individuals. Such occupations include allied health occupations (i.e., registered nurses and health technicians/licensed practical nurses), technician and technically oriented occupations (i.e., mechanics and installation and repair occupations), management in lower order services (i.e., jobs in the food and lodging industries), and administrative and sales-oriented occupations (i.e., clerical, secretarial, administrative, and sales and marketing).[14]

In response, Director Koenig testified that MET is coordinating two pilot programs in schools, using input from neighborhood groups, parents, students, schools, and industry.[15] Ms. Koenig and the Metropolitan Health Council, in conjunction with the Department of Health and the Hispanic community, created a program called "Yes Chicago." which was designed to increase the number of Hispanic health care professionals. This program features a special professional health career track within the Benito Juarez High School and can lead to careers in occupational therapy and physical therapy. Students combine school with work experiences in different health institutions. At the time of the hearing, many students were beginning their second work experience.[16]

A second pilot program targets the metal working industry on the north side of the city, which has a tremendous shortage of workers. Ten metal working companies have established new training equipment in different areas of metal working for sophomores at Senn High School. When negotiations are complete, students who have begun to work at the plants may receive wages. Plans include offering training to adults during evening hours to take full advantage of this equipment. This program is being considered by the Illinois Job Training Council for expansion to three other schools in Chicago and its suburbs.[17]

Janette Wilson, national Executive director of Operation PUSH,[18] commented about the types of occupations in which the government should offer training. Ms. Wilson was concerned about unemployed African Americans who have been out of the labor force so long that they are discouraged workers. She indicated that they are not even counted in unemployment statistics:[19]

> [T]here must be a commitment from the Federal Government to rebuild the Nation of African Americans from within. The Federal policy must create a job training program that does not just offer unrealistic job opportunities, but . . . creates [an entrepreneurial spirit] within the community. . . . It must train people for . . . jobs in which they can form cottage industry opportunities for themselves. For example, if you train people in the service industry, they may or may not be able to work for major hotels, but they can do work for the condominium associations. They can clean the buildings within their neighborhoods. They can do house

12 Gonzalez Koenig Testimony, *Chicago Hearing*, vol. 3, pp. 217–19.

13 The Institute for Urban Economic Development, prepared for Chicago United, Inc. and Mayor's Office of Employment and Training, *Identifying Employment Opportunities For Chicago Residents*, May 1991, pp. 1–2.

14 Ibid., pp. 1–2.

15 Ibid., pp. 219, 222.

16 Ibid., pp. 219-20.

17 Ibid., pp. 220–22.

18 Operation PUSH Inc. is a nonprofit civil rights organization promoting economic empowerment. It was founded by the Reverend Jesse Jackson in 1971.

19 Wilson Testimony, *Chicago Hearing*, vol. 3, p. 146.

maintenance. . . . [I]f, for example, . . . the people within [government funded] housing developments are trained and retained to maintain those buildings, to remove the garbage, . . . the developments would not look like they do. . . . [T]he people would have a better sense of purpose.[20]

Ms. Wilson proposed a partnership between corporate America and the Federal Government that reserves funds typically spent on program administration for use in supporting entrepreneurial projects. These entrepreneurial projects would train people in financially viable functions that would enable them to either find existing jobs or make their own jobs. "We must focus on job creation, [not] just . . . unemployment."[21]

In her testimony, Ms. Wilson also supported a publicly funded work fair program in the State of Illinois for people who have been removed from transitional assistance because of Federal and State budget reductions. Such a program has been proposed by the Jobs and Income Coalition for Illinois.[22]

Types of Training

The JTPA program provides preemployment counseling, classroom training in vocational and basic education, and placement assistance, including placements in on-the-job training (OJT) with subsidies provided to the employers. Many of the most job-ready clients receive only preemployment counseling and placement assistance, but Mr. Lewis claimed that they would have inevitably found jobs anyway.[23]

JTPA's OJT placements have been heavily criticized. The Chicago Urban League found in some communities that half of OJT placements were in low-skilled jobs where the employer instructed the worker, but provided no significant or new transferable skills. Thousands of minority JTPA clients were placed in low-skilled jobs with high turnover; their subsidized employers would have hired them without the program.[24]

Voicing a common complaint about JTPA, Director Koenig testified:

> I'd like to see a lot more long-term training. . . . If we're going to impact people who have barriers to employment, and we have educational deficiencies to deal with because [of] problems . . . with the public school system, we have to have longer term impact. We have to be able to train and educate people in occupational specific programs, so that we're talking, maybe, about a 2 or 3 year impact. We must have an apprenticeship program within different industries. But it must be a paid apprenticeship.[25]

The apprenticeship program Ms. Koenig advocated in her testimony should include employment and training, and provide the opportunity for advancement for both individuals on public aid, and those who are in entry level jobs and need some employment and training services. The program could divide the work week between 3 days of work and 2 days of school in the first year. It could pay 40 percent of the current wage for that occupation in the first year, 60 percent in the second year, and about 80 percent in the third year.[26]

Supportive Services

The JTPA does not provide stipends to support participants while they are in training. It directs program operators to coordinate with other agencies to provide supportive services (including financial assistance and other services such as

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20 Ibid., pp. 148–49. Wilson criticizes the status quo that draws money out of the developments by paying "people that don't live in them, don't support them, and don't care about the people [who] reside there" to remove garbage.

21 Ibid., p. 150.

22 Ibid., pp. 149–50.

23 Lewis Testimony, *Chicago Hearing*, vol. 3, p. 134, citing Urban League research.

24 Ibid., pp. 133–34.

25 Gonzalez Koenig Testimony, *Chicago Hearing*, vol. 3, pp. 194–95.

26 Ibid., pp. 195–96.

counseling for recovering substance abusers) with the training. However, the act is frequently criticized for its failure to provide such services. A witness cited the great difficulties that arise with welfare recipients, who, after training, are frequently unable to earn enough to replace lost welfare benefits:

> Most adult, . . . welfare recipients have been employed one or more times in their lives, and most employment program placements of all types last less than 2 years. . . . [M]uch more attention must be given to supporting individuals on the job, rather than trying to place them again if they run into problems and quit, or are fired.[27]

Access of Those with Limited-English-Proficiency

According to Esther Lopez, Latinos are underrepresented among JTPA participants. Low educational attainment and limited-English proficiency are barriers that exclude Latinos from participation in training programs, such as JTPA. Furthermore, Latinos who do participate are enrolled for shorter periods and receive fewer and less effective services. According to Ms. Lopez, when they are placed in jobs, they average lower wages compared to other JTPA participants, and many do not even find jobs when they leave the JTPA program.[28]

Ms. Koenig defended the city's efforts to make JTPA accessible to the Hispanic population:

> We have . . . worked with a base of service providers from the Hispanic community. We encourage our service providers . . . and we coordinate with the city colleges, to have English as a second language programs made available during the day, and in the evening, so that people who are not proficient in English can get that service, and hopefully, some of them have child care facilities. . . . We must . . . have quality programs with day care services. . . . We have to have people who are sensitive to the population they're serving. . . . [English as a second language is] one of the largest programs at the city colleges in the city of Chicago.
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> We also use Spanish language media an awful lot. We use radio, television, the newspapers, [and] special events in communities, so that we do have bilingual presentations and interviews. And our brochures are in English and Spanish. . . . [W]e have a tremendous outreach and recruitment program.[29]

As discussed above, at the time of the hearing, 20.7 percent of those enrolled in MET programs were Hispanic.[30] Statistics for the program year of 1989 show that 24 percent of the more than 12,000 JTPA participants enrolled in year-round training, 20 percent of the more than 13,000 youth in summer training, 22 percent of the 1,248 dislocated workers, and 6 percent of the 715 older workers were Hispanic.[31] The participation of Hispanics and other minorities in the JTPA program, Ms. Koenig concluded, "proves that we're working hard at it, and the job is getting done."[32]

In her testimony, Ms. Koenig did not address the concerns about the length and type of training

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27 Lewis Testimony, *Chicago Hearing*, vol. 3, pp. 134–35.

28 Lopez Testimony, *Chicago Hearing*, vol. 3, pp. 108–09.

29 Gonzalez Koenig Testimony, *Chicago Hearing*, vol. 3, pp. 197–98.

30 Documents produced pursuant to Commission subpoena duces tecum by Mary Gonzalez Koenig, Director, Mayor's Office of Employment and Training, June 26, 1992.

31 Mayor's Office of Employment and Training, "MET, 1989–1990 Annual Report." Chicago.

32 Gonzalez Koenig Testimony, *Chicago Hearing*, vol. 3, p. 198.

Latinos receive or their success when they leave the program.[33] However, an Illinois study finding differential outcomes between various JTPA participant groups attributed those differences to experience, skills, or educational background of persons entering the program. Ms. Koenig claimed that this study negated the Chicago Urban League's allegation that race alone was the salient factor in the differential outcomes.[34]

Administrative Difficulties

Director Koenig testified that Federal funding of JTPA is insufficient to seriously address employment and training services for those who could use the program. The limited funding that is available, at best provides assistance for less than 5 percent of those who need the services.[35] Ms. Koenig also criticized the eligibility criteria of the JTPA program:

> [E]mployment and training programs should be available to all who need and want them. . . . [E]ligibility . . . is a barrier. . . .[I]t's a barrier to the working poor when you have people, maybe two-income families, two members of a family working at minimum wage, and people have to come in and give us a family income, and if they're off by 100 or 200 hundred dollars, they can't participate in our program. [We need] accessibility, open eligibility, if we're serious about . . . creating [the] . . . work force this country needs.[36]

She testified that more targeting produces additional paperwork, "[We] get so . . . engulfed in paperwork and process, when we could be serving people. . . . And when you're using precious little administrative dollars . . . to deal with so much cumbersome administrative work, . . . , that is a real problem. . . . ."[37]

Reform

Congress passed the Job Training Reform Amendments of 1992[38] to alleviate some of the problems witnesses identified at the Chicago hearing. The amendments took effect a year after the hearing on July 1, 1993. The Department of Labor published an interim final rule to take effect December 18, 1992.[39]

The intent of the amendments and regulations was to improve the targeting of JTPA services to those facing serious barriers to employment, to enhance the quality of both services and program outcomes, to strengthen the linkage between provided services and local labor market needs, to foster a comprehensive and coherent system of human resource services, and to promote fiscal and program accountability.[40]

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33 A recent GAO report found significant disparities in the services provided to minorities nationwide. Although the disparities affected black participants more than Hispanic participants or other ethnic groups, 7 percent of service delivery areas showed disparities in the mode of training Hispanics receive. (Chicago was not included in their study.) A number of factors contributed to the disparities including the choices participants make about their own training and the limited availability of support services such as child care. (See General Accounting Office, "Job Training Partnership Act: Racial and Gender Disparities in Services." Report to the Chairman, Legislation and National Security Subcommittee, Committee on Government Operations, House of Representatives, September 1991.) Latinos' need for English-as-a-second-language classes may itself cause disparities in the services they receive.

34 Correspondence to Hon. Charles A. Hayes, U.S. House of Representatives, Washington, DC, from Mary Gonzalez Koenig, Assistant to the Mayor, Mayor's Office of Employment and Training, Chicago, IL, Jan. 29, 1990.

The study described in the correspondence was conducted by the Illinois Department of Commerce and Community Affairs.

35 Gonzalez Koenig Testimony, *Chicago Hearing*, vol. 3, p. 191.

36 Ibid., p. 192.

37 Ibid., pp. 192–93.

38 Job Training Reform Amendments Act of 1992, Pub. L. No. 102-367, 1992 U.S.C.C.A.N (106 *Stat.)* 1021 (hereafter cited as *JTRA Act of 1992)* (codified at various sections of Title 29).

39 57 Fed. Reg. 62,004 (1992) (to be codified at 20 C.F.R. pts. 626, 627, 628, 629, 630, 631, and 637).

40 Ibid.

Because of concerns about the private industry council, the new legislation further stipulated the composition of this body. It continues to require that the majority of PIC members must be representatives of the private sector[41] but further adds that "representatives of organized labor and community-based organizations . . . shall constitute not less than 15 percent of the membership of the council."[42] The earlier law did not have a minimum representation for labor unions and community-based organizations. Also, the new legislation included representatives of public assistance agencies as members of the Private Industry Council among groups previously specified (i.e., representatives of educational agencies, (vocational) rehabilitation agencies, economic development agencies, and the public employment service).[43]

"An enhanced role for the private sector is key to an effective JTPA program." the Department of Labor's new guidance stated:[44]

> [T]he Department wants to ensure that private sector leaders participate in JTPA private industry councils (PIC's)—particularly in the design and operation of JTPA programs. This includes participation in setting high standards for the content and acquisition of skills through training and linking training with job opportunities in the local and national labor market.[45]

In order to emphasize the major role the PIC plays in the JTPA program, the Department of Labor reiterated the role assigned to the PIC by statute in its regulations.[46] The duties of the PIC include determining the procedures for development of the job training plan for the service delivery area (i.e., the city of Chicago), providing policy and program guidance for all activities under the job training plan, and overseeing programs and activities under the job training plan, in addition to other duties.[47] The Department's regulations require the PIC to identify occupations for which there is a demand in the service area served and establish guidelines for the skills level to be provided in occupational training programs.[48]

The program in effect at the time of the hearing required participants to be economically disadvantaged, except that up to 10 percent need not be disadvantaged if they faced serious barriers to employment. The new legislation also used this requirement. However, it further targeted the program by requiring that, in addition to being economically disadvantaged, at least 65 percent of the program participants must also face serious barriers to employment. Persons who are lacking basic skills, school dropouts, recipients of cash welfare payments, offenders, homeless, or who have disabilities, meet this requirement.[49]

In light of the greater focus on assisting hard-to-serve individuals, the new Department of Labor regulations attempt to ease administrative burden by minimizing the amount of documentation necessary to establish an individual's eligibility for services. The Department of Labor also promised to develop a technical assistance guide for program operators to use in determining program eligibility.[50]

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41 29 U.S.C. § 1512 (a)(1) (1988).

42 *JTRA Act of 1992* § 112 (a)(1)(B), 106 *Stat.* at 1026.

43 Ibid.

44 57 Fed. Reg. 62,005.

45 Ibid.

46 Ibid. at 62,020.

47 29 U.S.C. § 1513. *See also*, 20 C.F.R. § 628.410 (1993).

48 20 C.F.R. § 628.410 (1993).

49 *JTRA Act of 1992* § 203, 106 *Stat.* at 1055.

50 57 Fed. Reg. 62,021. *See also* 20 C.F.R. §§ 628.505-510 (1993).

The statute encourages service to Latinos with language directed toward individuals with limited-English-proficiency skills and with provisions that allow programs to be tailored to their needs. First, the statute lists "English-as-a-second-language instruction"[51] and bilingual training[52] as authorized services. Second, "efforts to expand awareness of training and placement opportunities for limited-English proficient individuals" are now an authorized training-related service.[53] The amendments encourage linkages with other programs, particularly to provide supportive services that enable eligible individuals to participate in the program.[54] Finally, should a group face serious employment impediments that are not stated in the statute, a service delivery area may request that the Governor include that specific barrier to the eligibility criteria.[55]

The JTPA reforms are intended to enhance program quality by providing more intensive and comprehensive services to participants. Each participant must now receive an objective assessment of skill levels and service needs.[56] A service strategy must be developed that identifies the employment goal, appropriate achievement objectives, and relevant services.[57] Each participant's progress must also be reviewed to determine if the service strategy is successfully meeting the objectives.[58]

Supportive services must be provided along with basic skills and occupational skills training when the assessment and service strategy indicates such services are appropriate.[59] They may be provided either directly or through arrangements with other programs.[60] In order to provide such services, service delivery areas, such as the city of Chicago, are required to establish appropriate linkages with other Federal programs[61] and "with local educational agencies, local service agencies, public housing agencies, community-based organizations, business and labor organizations, volunteer groups working with disadvantaged adults, and other training, education, employment, economic development, and social service programs."[62]

The program still does not provide stipends, but limits needs-based payments and financial assistance "to payments necessary for participation in the program" as determined in accordance with a locally developed formula or procedure.[63]

In regard to on-the-job training issues, the Department of Labor explains: "OJT is a training option meant to be conducted in the highest skill occupations appropriate for the eligible participant. It is not subsidized employment for low skill

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51 *JTRA Act of 1992* § 203, 106 *Stat.* 1057.

52 Ibid.

53 Ibid.

54 Ibid., at 1056, and see the discussion below.

55 The Governor is limited, however, to adding only one category of individuals who face serious employment barriers. Ibid., at 1055.

56 Ibid., at 1056.

57 Ibid.

58 Ibid.

59 Ibid.

60 Ibid.

61 Ibid., at 1060.

62 Ibid.

63 Ibid., at 1058. Permissible needs-based payments are further explained in the Department of Labor's regulations. *See* 20 C.F.R. §§ 627.305-310 (1993).

occupations which need very little training time."[64] The Department also explains:

> Employers who exhibit a pattern of failing to provide participants with continued long-term employment (minimum of 6 months), or who provide wages and benefits not at the same level as other employees similarly employed, both during the OJT period and upon completion, will be ineligible for additional OJT contracts.[65]

"The Governor will be expected to set standards" for when an employer is determined as having exhibited a pattern of failing to provide continued employment with wages at the same level as similarly situated employees.[66]

The Department of Labor made a commitment to develop an OJT technical assistance guide that would discuss appropriate occupational skill levels for OJT agreements. The Department then stated: "It is expected that the amended legislation, these interim final regulations, technical assistance, and Department of Labor monitoring will help to eliminate the problems that were identified in OJT . . . ."[67]

The effects of these changes may not yet be fully apparent, since program operators have only begun to modify their JTPA programs to conform to the new legislation and regulations. Furthermore, other efforts to reform job training in the United States are underway. The School-to-Work Opportunities Act[68] was passed in May 1994. The new law provides programs for high school students that combine school-based learning and work-based learning including a planned program of job training and paid work experience whenever possible.[69]

The Department of Labor has also undertaken activities to enhance the quality and effectiveness of JTPA. The Department anticipates conducting a national survey of JTPA participants, soliciting recommendations through a *Federal Register* announcement, reviewing applicable research, and holding small group and town hall discussions at 15 sites around the country. Chicago is designated as one of these. The information obtained from these activities will result in a set of recommendations for JTPA in late 1994.[70]

Summary

Community witnesses testified that the Job Training Partnership Act (JTPA), as the main Federal program for job training, was either not achieving its purpose, or was having adverse effects on training participants. Witnesses alleged that the public-private partnership does not effectively involve employers in the program, training is not offered in occupations with the most potential for jobs, some employers use on-the-job training as an employer subsidy without increasing the skills of workers, and program participants do not receive the support or services they need during training. Finally, program administrators face insufficient funding, the enforcement of unnecessarily restrictive eligibility criteria, and cumbersome paperwork. Recent national amendments to the JTPA program propose to address many of these concerns, however, the program's participants have yet to experience the effects.

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64 57 Fed. Reg. 62,009.

65 Ibid.

66 Ibid.

67 Ibid. Regulations on OJT appear at 20 C.F.R. § 627.240 (1993).

68 Pub. L. No. 103–39.

69 For a description of the new law see "School-To-Work Law Reshapes Vocational Programs," *Education Daily* (May 11, 1994, special supplement).

70 Hugh Davies, Director, Office of Employment and Training Programs, U.S. Department of Labor, correspondence to Rosalind D. Gray, Acting General Counsel, United States Commission on Civil Rights, Washington, DC, June 8, 1994.

Chapter 8. The Provision of Accessible Services Through a Diverse Government Work Force

Minority representation in State and local government employment is essential to ensuring equal employment opportunities and providing accessible government services to diverse communities, including the large and growing Spanish-speaking population in need of critical services. Testimony and Commission analysis of subpoenaed documents reveal minority underrepresentation in government employment, particularly with respect to Hispanics Concrete steps have been taken to increase Hispanic representation in the State government work force through a comprehensive employment plan to increase the number of Hispanics and bilingual persons employed in State government. Such initiatives, however, have not been developed to address the persistent underrepresentation of Hispanics in city employment.

The State Government Work Force

Although the Hispanic population in Illinois was estimated between 8 to 10 percent, their representation in the State government's work force is less than half of that estimate.[1] Indeed only 1,566 (less than 2 percent) of the State government's work force of between 80,000 and 100,000 people were Hispanic.[2]

The underrepresentation of Hispanic employees appears at various levels within the State government. According to Robert Ruiz, the past president of the Illinois Association of Hispanic Employees, only 106 Hispanics were employed by elected constitutional officers or office holders; two cabinet level appointees were Hispanic, and 39 Hispanics had been appointed to boards, commissions, and other policymaking bodies.[3]

According to Stephen Schnoff State director of the department of central management services, although the size of the overall State work force has decreased, there has been an increase in the number of Hispanic State employees. Between January 1991 and May 1994 the number of non-Hispanic personnel under the personnel code declined by 3.9 percent while the number of Hispanic employees increased by 11 percent.[4] Under Illinois law, the department of central management services is responsible for the development and implementation of plans to increase the number of Hispanics and bilingual persons employed by State government at supervisory, technical, professional and managerial levels.[5]

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1 One witness estimated that 8 percent of the State population was Hispanic. *See* Rose Mary Bombela, Director, Illinois Department of Human Rights, testimony, *Chicago Hearing*, vol. 3, p. 205. By including an estimate of those with undocumented status, another witness estimated Hispanic representation between 9 and 10 percent. *See* Ruiz Testimony, *Chicago Hearing*, vol. 3, pp. 113–14.

Hispanic representation in the State government work force was 2.3 percent according to the director of the Illinois Department of Human Rights, Bombela Testimony, *Chicago Hearing*, vol. 3, p. 205; and 1.5 to 2 percent according to another witness. Ruiz Testimony, *Chicago Hearing*, vol. 3, p. 115.

2 Ruiz Testimony, *Chicago Hearing*, vol. 3, pp. 113–15.

3 Ibid., p. 116.

4 Stephen B. Schnorf, Director, Department of Central Management Services, State of Illinois, letter to Rosalind D. Gray, Acting General Counsel, U.S. Commission on Civil Rights, May 25, 1994 (hereafter Schnorf Correspondence).

5 Ill. Ann Stat. ch. 20, § 405/67.29 (Smith-Hurd 1993).

Greater Hispanic representation has been achieved through the State's Hispanic Employment Plan,[6] a multifaceted approach to enhance the employment opportunities of Hispanics in State government and government services to the Hispanic population in Illinois.[7] The plan includes Hispanic employee informational workshops that provide information on State job opportunities; an employment counseling and recruitment program that was implemented in February 1992, and offers Spanish-speaking employment counselors for Spanish-speaking individuals; Spanish-speaking test options for employees in order to meet job-related language requirements in an additional number of job titles (e.g., 280 titles in 1994); an extended eligibility period for qualified job candidates, when the extension will assist in achieving affirmative action goals; and a language bank of information on the bilingual skills of employees in the Illinois Department of Public Aid.[8] Also, the department of central management services conducts an annual survey of all agencies to assess the frequency of bilingual employees providing service to non-English-speaking clients. Information from the survey is used to increase the numbers of bilingual employees.[9]

The director of the Illinois Department of Human Rights testified about her department's role in overcoming the underutilization of the Hispanic community in the State government work force. As part of the Executive Training Program, the department of human rights will identify agencies that are underutilizing minority groups and will assist in developing a special training program for recruitment, upward mobility, and promoting and hiring of the underutilized groups. Sixteen agencies were targeted for this program.[10]

In addition to a lack of representation of Hispanic and bilingual employees in State government, another area of concern was the alleged mistreatment of Hispanic employees and limited-English-speaking persons seeking State government services. Robert Ruiz, founder and past president of the Illinois Association of Hispanic Employees, testified that a 1991 survey of 1,400 State Hispanic employees revealed complaints about the treatment of both Latino employees and limited-English-proficient clienteles.[11] He testified that although Latinos reported that their names often appeared on promotional eligibility lists, they encountered barriers to promotions and upward mobility due to managers' failure to adhere to

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6 See State of Illinois, Department of Central Management Services, *Hispanic Employment Plan*.

7 Under Illinois law, the State department of central management services:

> shall formulate and administer recruitment plans and testing of potential employees for agencies having direct contact with significant numbers of non-English speaking or otherwise culturally distinct persons. The Department shall require each State agency to annually assess the need for employees with appropriate bilingual capabilities to serve the significant numbers of non-English speaking or culturally distinct persons. The Department shall develop a uniform procedure for assessing an agency's need for employees with appropriate bilingual capabilities. Agencies shall establish occupational titles or designate positions as "bilingual option" for persons having sufficient linguistic ability or cultural knowledge to be able to render effective service to such persons. The Department shall ensure that any such option is exercised according to the agency's needs assessment and the requirements of this Code. The Department shall make annual reports of the needs assessment of each agency and the number of positions calling for non-English linguistic ability to whom vacancy postings were sent, and the number filled by each agency. Such policies and programs shall be subject to approval by the Governor. Such policies, program reports and needs assessment reports shall be filed with the General Assembly by January 1 of each year and shall be available to the public.
>
> Ill. Ann. Stat. ch. 20, § 415/9 (6) (Smith-Hurd 1993).

8 Schnorf Correspondence.

9 Ibid.

10 Bombela Testimony, *Chicago Hearing*, vol. 3, pp. 204–06. *See also* Schnorf Correspondence.

11 Ruiz Testimony, *Chicago Hearing*, vol. 3, p. 116.

appropriate hiring or promotional standards, apparent preselection of individuals for coveted positions, and a lack of job and career opportunities within the positions occupied by Latinos.[12]

Mr. Ruiz testified that Latinos also often had larger workloads and were suffering from tremendous job pressures, due to the additional duties of serving as an interpreter. Although a program was developed to identify public contact positions in which the use of a second language was essential, Spanish-speaking Latino employees were viewed with suspicion or were harassed for doing their job. Managers misunderstood and disapproved of their role, or forbade those employees from interpreting for the public. Latino employees were taken from their regular jobs to provide interpretation services for other staff members, and then found themselves falling behind in their own work. At the same time, they were refused service unless they had brought along an interpreter. Also, the supply of bilingual materials available to agencies serving predominately Spanish-speaking clientele was inadequate, according to Mr. Ruiz.[13]

In response to these and other concerns, the department of central management services has established a supplemental pay provision for State bilingual employees to compensate for their additional duties as interpreters.[14] According to the department's director, if Hispanic employees are harassed or mistreated:

> such actions would clearly violate state policy, and would not be tolerated. . . . [Hispanic employees] are clearly protected by Personnel Rules, and, in many cases, collective bargaining contract provisions which seek to ensure fair treatment. All employees are covered by a grievance procedure where any claim of improper treatment can be examined and rectified if substantiated.[15]

The department is also developing a training program on cultural diversity in the workplace for all State agencies.[16] Moreover, according to Mr. Schnoff additional examination options for Spanish-speaking applicants have been established, hiring statistics of race and sex categories are being monitored, a commitment has been made to an Upward Mobility Program to enhance advancement opportunities for Hispanic employees, and a sensitivity training is being developed to address these concerns.[17]

City Government Work Force

A significant and steady increase of Hispanics in Chicago has not been reflected in the city government work force, which services this growing community. According to the U.S. census of Chicago, between 1980 and 1990, the Hispanic

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12 Ibid., pp. 116–18.

13 Ibid.

14 Schnorf Correspondence, p. iii. The bilingual pay supplement for State employees is required under Illinois law:

> For the purposes of the pay plan established under Section 8a of this Code, the Director may establish a special pay supplement for those positions of employment that require, pursuant to the Department's official classification specification, that a person employed in that position speak or write a language other than English. Positions paid under Section 8a of this Code may be eligible for a bilingual pay supplement to attract bilingual individuals, to encourage present employees to become proficient in languages other than English, or to retain qualified bilingual employees. The positions eligible for a bilingual pay supplement, the amount of the supplement and the length of time it remains in effect shall be negotiated between the Department and the appropriate collective bargaining representative as determined under the Illinois Public Labor Relations Act (footnote omitted). The bilingual pay supplement may be negotiated for each foreign language required for the position by the Department's official classification specification.
>
> Ill. Ann. Stat. ch. 20, § 415/8a.2 (Smith-Hurd 1993).

15 Ibid., p. v.

16 Schnorf Correspondence, p. iii.

17 Ibid, pp. v–vi.

population in Chicago increased from 14.1 percent to 19.6 percent.[18] In January 1989 Hispanics were 6.6 percent of the city work force (2,751 of the total 41,381 employed), with 8.8 percent (66 out of 754) in "Shakman exempt" positions (i.e., management level positions).[19] In May 1992, Hispanic city employees represented 8.2 percent (3,349 out 40,875 employees) of the city work force and 12.2 percent (110 out of 900) of Shakman exempt positions.[20] In May 1994, 8.9 percent of city employees were Hispanic (3,501 out of 39,534) and 13.1 percent were on Shakman exempt positions.[21]

Irma Claudio, executive director of the Hispanic Alliance for Career Enhancement (HACE), a not-for-profit organization, testified that:

> Hispanics continue to be disenfranchised from the professional, managerial, and decisionmaking positions that can support the economic and social growth of our community, and the root causes of these conditions are still present. Our first generation, or, at best, very young and fragile Hispanic college education population, lacks access and insights for penetrating the processes of hiring and recruitment, as well as career advancement at those levels. Employers have yet to build inroads into the Hispanic community, for accessing qualified talent, as well as the skills for developing this talent once they have been hired.[22]

In response to Commission hearing concerns of low Hispanic representation in the city work force, Glenn E. Carr, commissioner, City of Chicago Department of Personnel, testified:

> [T]he ability to make a significant change in the percentage of any group in the work force in a short period of time is quite limited. . . . it's difficult to make a lot of progress on behalf of any single racial group, when you have . . . limited resources or limited opportunities with which to address their needs or their concerns.[23]

Unlike the mandated comprehensive plan for Hispanic and bilingual employment in the State government work force discussed above, the city government does not have a comprehensive plan to require recruitment, testing, annual needs assessment and a bilingual pay supplement for its work force. The city personnel department was not taking any steps to develop such a plan. However, Glenn Carr, testified about the city's general recruitment efforts:

> [W]e send out [monthly] job opportunity notices to more than 1,400 sources in the city of Chicago. They include elected officials, newspapers, radio, television, community organizations and individuals who have asked to be on our mailing list, as well as . . . the 50 aldermanic offices . . . .[24]

Mr. Carr remarked that the city receives approximately 95,000 applications a year, which is "the best indication that people in communities across

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18 City of Chicago, *U.S. Census of Chicago, Race and Latino Statistics for Census Tracts, Community Areas and City Wards: 1980, 1990*, February 1991, p. 6 (citing U.S. Bureau of the Census, *Census of Population and Housing, 1990: P.L. 94–171 Data for Illinois*. 1980 Data: Bureau of the Census Summary File 4A, Table 13).

19 "Shakman-exempt" position refers to the consent decree entered in the case captioned *Shakman v. Democratic Organization of Cook County, et. al.* (N.D Ill. 1983). *See* Rosanna A. Marquez, Director of Programs, Office of the Mayor, letter to Rosalind D. Gray, Acting General Counsel, U.S. Commission on Civil Rights, May 23, 1994 (hereafter Marquez Correspondence); City of Chicago, Department of Personnel, *City of Chicago, Work Force Highlights*, May 29, 1992.

20 City of Chicago, Department of Personnel, City of Chicago Work Force Highlights, May 29, 1992; City of Chicago, Full Time Employees, Sex/Race Breakdown by Department, May 30, 1992.

21 Marquez Correspondence, p. 4; Attachment C—City of Chicago, Sex/Race Breakdown by Department, May 6, 1994.

22 Irma Claudio, Executive Director, Hispanic Alliance For Career Enhancement (HACE), testimony, *Chicago Hearing*, vol. 3, pp. 125–26.

23 Glenn E. Carr, Commissioner, Department of Personnel, City of Chicago, testimony, *Chicago Hearing*, vol. 3, p. 209.

24 Ibid., pp. 199–200.

this city feel that we have an administration that is open and fair."[25]

Mayor Richard M. Daley testified at the Commission hearing that: "our ability to change the ethnic makeup of the city work force is limited to hiring . . . ."[26] As set forth in table 8.1, in 1991, 13.2 percent of the 3,395 people the city hired were Hispanic. Of the total applicants in 1991, only 12.3 percent (11,799) were Hispanic and 9 percent (4,391) of eligible candidates were Hispanic.[27] By May 1994, only 11.3 percent of total applicants were Hispanic (39,192 out of 343,507).[28]

In reference to the recruitment of bilingual personnel to meet the needs of the growing limited-English-speaking population in need of government services, Mr. Carr testified that the personnel department did not require further recruitment activity.

"[W]e have sufficient numbers . . . of bilingual individuals on our various lists that we're able to comply with [a request for bilingual job candidates] very easily."[29] "[F]or referrals of people who are bilingual, we simply go to the 45[,000] or 46,000 people who are on our eligibility list," according to Carr.[30] Mr. Carr testified that he received almost weekly correspondence from the commissioner of health requesting that a specific job title be limited to people who are bilingual.[31] In response to this need, Carr testified:

> We are currently working on a revision of the whole approach that the city has historically taken to recruitment of professionals, along with one of the private sector organizations here in Chicago. We . . . have developed a task force which will provide us with recommendations [for] recruiting professionals.[32]

As a result of these revisions, Mr. Carr expects the department of health will have much more responsibility to recruit bilingual health care professionals.[33]

During 1991, with respect to the advancement of Hispanic employees, 8 percent of the city government work force was Hispanic, 10.2 percent of the employees receiving promotions were Hispanic, and 8.1 percent of the employees who left the city work force were Hispanic.[34] Opportunities for increasing and advancing Hispanics in the city work force can be hampered by layoffs due to reductions in Federal and State funding. According to Director Carr, "[m]inority employees tend to be the city's newer, least senior employees."[35] He testified:

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25 Ibid., vol. 3, p. 202.

26 Hon. Richard M. Daley, opening remarks, *Chicago Hearing*, vol. 1, pp. 23–24. *See* Carr, written statement submitted at *Chicago Hearing*. Mayor Richard M. Daley issued a statement of policy on equal employment opportunity and affirmative action on Apr. 25, 1989, that included an affirmative action plan for 1985 to 1995. It established an affirmative action council to implement and monitor the affirmative action plan, and to set goals and timetables for departments with serious underrepresentation of minorities and job vacancies. Office of the Mayor, City of Chicago, Statement of Policy Equal Employment Opportunity/Affirmative Action; and Office of the Mayor, City of Chicago, Executive Order 89–8, Apr. 25, 1989.

27 *See* tables 8.1, 8.2.

28 Manriquez Correspondence, Attachment E—City of Chicago, Department of Personnel, Sex/Race Summary of Applicant Lists by EEO Category, Apr. 29, 1994.

29 Ibid., pp. 206–07.

30 Ibid., p. 207.

31 Ibid., pp. 206–07.

32 Ibid., pp. 207–08.

33 Ibid., p. 208.

34 City of Chicago, Department of Personnel, "Sex Race Report of New Hires, Promotions, and Off Actions by Category From 91/01 to 91/12 as of 12/26/91;" and "City of Chicago Work Force Highlights, November 1991."

35 Carr, written statement submitted at *Chicago Hearing*, p.2.

TABLE 8.1
Hispanics Represented Among 1991 Applicants, Eligible Candidates, and New Hires in the City of Chicago Government Work Force, Overall and by Job Category

	Applicants	Eligible candidates	New hires
All races/ethnic groups	95,703	48,069	3,395
Hispanics	11,799	4,391	450
Percent	12.3%	9.0%	13.2%
Percent in job categories			
Officials/administrators	15.3%	7.7%	10.8%
Professionals	8.9%	7.0%	7.5%
Technicians	10.5%	8.2%	15.3%
Protective service	13.7%	10.3%	13.8%
Paraprofessionals	7.7%	7.0%	11.3%
Office clerical	10.6%	8.9%	13.2%
Skilled craftsmen	14.0%	10.7%	11.3%
Service maintenance	15.7%	13.4%	18.8%
Undefined	11.3%	10.1%	11.1%

Source: City of Chicago, Department of Personnel: "Sex/Race Summary of Applicant Lists by EEO Category From 1/01/91 to 12/31/91," 12/27/91; "Sex/Race Summary of Eligible Lists by EEO Category," 12/26/91; and "Sex Race Breakdown by Category of All New Hires From 91/01/01 to 91/12/31," 12/26/91.

TABLE 8.2
Number of Hispanic Applicants and Eligible Candidates Compared to the Number of Positions for Which There Were New Hires in the City of Chicago Government Work Force in 1991, Overall and by Job Category

	Hispanic applicants	Eligible Hispanics	All new hires
Total	11,799	4,391	3,395
Within job categories:			
Officials/administrators	130	27	65
Professionals	817	402	348
Technicians	722	595	150
Protective service	5,131	1,734	1,209
Paraprofessionals	420	253	266
Office clerical	1,535	907	719
Skilled craftsmen	547	275	194
Service maintenance	2,006	173	399
Undefined	534	25	45

Source: City of Chicago, Department of Personnel: "Sex/Race Summary of Applicant Lists by EEO Category From 1/01/91 to 12/31/91," 12/27/91; "Sex/Race Summary of Eligible Lists by EEO Category," 12/26/91; and "Sex Race Breakdown by Category of All New Hires From 91/01/01 to 91/12/31," 12/26/91.

[C]onsistent with the provisions of collective bargaining agreements, we have, unfortunately, had to lay off those people who had the least seniority. . . . [O]ur efforts to bring minorities into the work force were thwarted by our being forced, for economic reasons, to cut the size of our work force.[36]

Mayor Daley also stated that "dismissals . . . are dictated by union rules that favor seniority. As a result, minorities hired by my administration over the last year have been affected most severely by recent layoffs [and] union contracts."[37] Since the Commission hearing, the city has indicated that:

Since the time of those layoffs, many of the affected individuals have been reinstated to City employment either in new positions or in their former jobs. Each collective bargaining agreement with the City provides that laid-off workers have bumping and reinstatement rights and rights to fill vacancies. In addition, Chicago Personnel Rules provide that laid-off workers are to be placed on reinstatement lists for a number of years, based upon their years of service. These lists give priority to laid-off workers, and they have resulted in the reduction of laid-off employees on reinstatement lists to only a few as of December, 1993.[38]

Mayor Daley testified, "My administration . . . has increased minority hiring in government, despite cutbacks in Federal aid and [a] shrinking city work force."[39] He elaborated, "Today in city government, . . . the overall number of jobs and percentage of jobs held by minorities is higher than when I . . . took over . . . in 1989, even though there are 700 fewer people on the city payroll."[40] Reduced Federal Government funding concerned Mayor Daley, however, not just because it forced layoffs in the existing work force, but because it restricted job creation. He explained, "As Federal funding cuts forced belt tightening, adjusted for inflation, Federal dollars for Chicago are less than half what they were a decade ago, further limiting our ability to directly provide jobs."[41]

Summary

Community witnesses at the Commission hearing were concerned that Hispanics were underrepresented in both the State and city government work forces, particularly because the numbers of Hispanics in need of government services exceeds the capacity of the existing bilingual government staff to serve them. Increasing representation of Hispanics among State employees was only one of many concerns with this government work force. Other issues included: the upward mobility of Hispanics, treatment of Hispanic employees, managers' cultural sensitivity, and the provision of services to limited-English-speaking persons. One official maintained that the executive training program addresses only one of these community problems. However, the State has a mandated multifaceted plan to increase Hispanic and bilingual employment through recruitment, training, bilingual pay supplement, and annual needs assessment measures.

By contrast, the city of Chicago has not developed and implemented a comprehensive plan to meet the need of the growing Hispanic and Spanish-speaking population. City officials reported an increased number of Hispanics employed during the current administration, but indicated that efforts to bring about change were hampered by budget cuts and layoffs. Nevertheless, the low number of Hispanics in the city work force has consistently remained a pressing problem in light of the Hispanic community's significant and growing presence in the city.

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36 Carr Testimony, *Chicago Hearing*, vol. 3, p. 200.

37 Hon. Richard M. Daley, opening remarks, *Chicago Hearing*, vol. 1, pp. 23–24.

38 Marquez Correspondence, p. 5.

39 Hon. Richard M. Daley, opening remarks, *Chicago Hearing*, vol. 1, pp. 23–24.

40 Ibid.

41 Ibid., p. 24.

Part III. Police-Community Relations in Chicago

Police-community relations are a source of racial and ethnic tensions in Chicago. As one witness at the Chicago hearing testified: "History has shown that virtually every past civil disorder or incident of urban rioting and destruction of property has resulted from community reaction to perceptions of police abuse."[1] The state of police-community relations in Chicago was described by another witness: "People in the communities see [the police] as an occupying force," while the police see themselves as patrolling enemy territory and refer to themselves as "the largest gang in town."[2] Part III of this report examines police-community relations in Chicago, including procedures for the investigation and adjudication of police misconduct complaints; and discusses other aspects of police-community relations, such as access of persons with limited-English proficiency to police services, community policing, recruitment, and training. It also addresses the Federal Government's role in prosecuting cases of police misconduct.

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1 Mary Powers, Coordinator, Citizens Alert, testimony, *Chicago Hearing*, vol. 2, p. 22.

2 Standish E. Willis, Esq., testimony, *Chicago Hearing*, vol. 2, p. 24.

Chapter 9. Overview of the Chicago Police Department and Police Board

When the U.S. Commission on Civil Rights held its hearing, the Chicago Police Department was headed by Superintendent of Police, Matt Rodriguez. The Chicago Police Department is organized into the office of the superintendent, and five bureaus, each commanded by a deputy superintendent,[1] and has a total force of 12,119 sworn members.[2] The department is divided into six police areas. Each area is commanded by a deputy chief and is composed of several police districts. In total there are 25 police districts, and each district is directed by a district commander.[3]

The Office of Professional Standards and the Internal Affairs Division of the Chicago Police Department are in the Office of the Superintendent.[4] The Office of Professional Standards is a civilian investigative unit, which was created in 1974 by a general order of the police superintendent to investigate excessive force complaints and provide recommendations to the superintendent.[5]

The Chicago Police Board is an administrative tribunal that determines whether there is sufficient evidence to sustain charges of misconduct in order to set disciplinary penalties.[6] In 1961, the police board was created by the late Mayor Richard J. Daley in response to a police scandal involving officers who were part of a burglary ring on Chicago's northside. The officers were ultimately convicted.[7] The board consists of nine members appointed for 5-year terms by the mayor, with the consent of the city council.[8] The board has three primary responsibilities: (1) the board conducts a search and nominates three candidates to the mayor when a vacancy occurs for the position of the superintendent, (2) the board makes the rules and regulations governing police conduct; and (3) the board hears the superintendent's recommendations for disciplinary action against police officers and civilian members of the Chicago Police Department.[9]

Under Illinois law and the municipal code of Chicago, no officer or civilian employee of the Chicago Police Department may be discharged or suspended for more than 30 days without an evidentiary hearing before the Chicago Police

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1 Willis testimony, *Chicago Hearing*, vol. 2, p. 22. These include the following Bureaus: Operational Services, Investigative Services, Administrative Services, Technical Services, and Community Services.

2 Matt Rodriguez, Superintendent, CPD, testimony, *Chicago Hearing*, vol. 2, p. 187.

3 CPD, Gen. Order No. 89–4 (effective May 13, 1989); No. 90–8, Addendum 2A (effective July 19, 1991).

4 Chicago Police Department (CPD), Gen. Order No. 90–8 (effective Nov. 1, 1990). The Office of Professional Standards is discussed in greater detail below.

5 City of Chicago Police Board, *1990 Annual Report*, p. 7.

6 Ibid., p. 8.

7 Albert Maule, President, Police Board, testimony, *Chicago Hearing*, vol. 2, p. 199.

8 Chicago, Code § 2–84–020 (1990). Maule Testimony, *Chicago Hearing*, vol. 2, pp. 198–99. At that time, the board consisted of four black members, one Hispanic, and four whites. There were three female members. Six of the members were lawyers.

9 Maule Testimony, *Chicago Hearing*, vol. 2, p. 200.

board.[10] The Board also examines suspension review appeals for disciplinary cases involving suspensions of 6 to 30 days.[11]

10 Ill. Rev. Stat. ch. 24,§10–1–18.1 (1992); Chicago, Code § 2–84–030 (4) (1990).

11 City of Chicago Police Board, *1990 Annual Report*, p. 5.

Chapter 10. Allegations of Police Misconduct in Chicago

For many years, the Chicago community has been concerned about the presence of numerous police officers on the Chicago police force who have been the recipients of multiple complaints of police misconduct, as well as the department's failure to adequately resolve these problems.[1] These problems still remained in June 1992. Moreover, the seriousness of the misconduct discussed ranged from verbal abuse to allegations of torture.

Citizen's Alert, a Chicago organization that assists victims of police misconduct, receives 2 to 20 complaints of police abuse a week.[2] According to Mary Powers, a volunteer who has worked with Citizens Alert for more than 20 years, "almost without exception" these complaints contain allegations of "racial insults and/or derogatory remarks about the victim's gender or sexual orientation" It is so common and expected that "often a complainant mentions it only casually in the course of the complaint about physical brutality"[3] Ms. Powers elaborated:

> [I]t's been prevalent for so long that . . . people just assume it's part of your dealing with a police officer. I mean, the complaints of brutality almost inevitably are accompanied by racial insults or, if you're a woman, they insult you sexually. If you're a person who is of some ethnic background that they can discern or think they can, they'll dredge up some derogatory term about that. It's a terrible, terrible problem. I will say that in recent, say within the last 2 years, we brought it up repeatedly at the Police Board . . . and under the current care of that Board, there has been more attention paid to verbal abuse.[4]

Flint Taylor, an attorney who litigates police brutality cases, testified on the prevalence of police verbal abuse in the police academy:

> [W]e've had testimony from both the high level and the cop on the beat saying that they come out more aggressive, with less respect for the community, when they come out of the Police Academy, than when they go in. We've talked specifically about the kind of verbal abuse that's being said on the street. . . . They readily admit they use that kind of language, yet they're not being disciplined in any meaningful way for that. They're not being trained not to say it. And, in fact, it's being reinforced.[5]

The excessive use of force, particularly by officers who are repeatedly charged with offenses, is also of great concern to Chicago residents. Mr. Taylor alleged that, based on the information he has obtained through lawsuits, there are officers on the force with between 60 and 90 complaints of police brutality against them over a 10-15 year period.[6]

Mr. Taylor cited to a recent example of such use of force.[7] According to Mr. Taylor, at the time that a particular officer was hired 15 years ago, the department had been apprised that his wife had previously charged him with repeated domestic

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1 For instance, in February 1983 a Chicago television station did a series of reports on the presence of repeat offenders on the force.

2 Powers Testimony, *Chicago Hearing*, vol. 2, p. 17.

3 Ibid., p. 17.

4 Ibid., pp. 46–47.

5 Ibid., pp. 56–57.

6 Taylor Testimony, *Chicago Hearing*, vol. 2, p. 9.

7 Ibid., pp. 10–12.

abuse. Two years after his initial employment, the officer beat a Hispanic man, resulting in paraplegia, but a departmental investigation exonerated the officer in the incident. Then in the early 1980s, the officer was sued for police brutality, which resulted in a $1 million verdict. However, there was no disciplinary action taken against the officer. According to Mr. Taylor, the incidents continued:

> In the next few years, he accumulated dozens of complaints against him for brutality, none of which were sustained against him. . . . [A]nd many times these incidents had to do with his nightstick, his flashlight. There was a recurring pattern. In the mid-eighties a fellow officer sued him for a complaint where, when he was subduing a citizen, he apparently hit the officer with his nightstick. Still no discipline. [In] 1990 he beats a client of ours with his fists and with his flashlight. We go to Federal court and we sue him. We not only sue him but we sue the city for his background and for them having a policy concerned with these repeaters and not disciplining them. The city settles that case for $62,000. The man is still on the force.[8]

Mr. Taylor further alleged that a year later, the officer was assigned to an AIDS protest, where the officer allegedly beat and falsely arrested Mr. Taylor's client.[9]

Attorney Standish Willis testified that one supervisory commander often speaks of having to suspend the rights of citizens for the benefit of effective law enforcement. Mr. Willis also complained about one high ranking supervisor's practice of publicly defending and justifying police misconduct at the time allegations are raised. Mr. Willis stated that "[t]his kind of action and this kind of activity . . . at the policy level, at the high ranking supervisory level, indeed encourages police abuse at the troop level"[10]

The most serious allegations of police abuse centered on allegations of the systemic use of torture. Attorney Flint Taylor of the People's Law Office indicated:

> I was involved in several cases which uncovered evidence that a certain police commander in this city was involved in, either directly or indirectly, with 70 cases of torture of citizens brought in for various alleged crimes or for questioning in a black police district here in the city of Chicago. And when I say torture, I use the word advisedly. I'm talking about electric shock, I'm talking about putting plastic bags over people's heads, and I'm talking about playing Russian roulette with guns in their mouths.[11]

These allegations spawned protests from civil rights and community groups and litigation for many years.[12] In February 1993 the Chicago Police Board fired the commander accused of torturing a murder suspect 11 years ago and ordered 15-month suspensions for two detectives that served with him at the police command center where the torture took place.[13]

In his testimony before the Commission, Police Superintendent Matt Rodriguez, the Chicago Police Department's first Hispanic superintendent,

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8 Ibid., pp. 11–12.

9 Ibid., p. 12.

10 Willis Testimony, *Chicago Hearing*, vol. 2, pp. 24–55.

11 Taylor Testimony, *Chicago Hearing*, vol. 2, p. 13.

12 See Mary Ann Williams, "Torture in Chicago," *Chicago Lawyer*, vol. 12, no. 3, March 1989; John Conroy, "House of Screams," *Reader*, vol. 19, no. 17, Jan. 26, 1990; and Amnesty International, United States of America, Allegations of Police Torture in Chicago, Illinois (December 1990); People v. Wilson, 487 N.E.2d 1015 (Ill.App. 1 Dist. 1985), *appeal granted*, People v. Wilson, 493 N.E.2d 1086 (Ill. 1986), *and rev'd*, People v. Wilson, 513 N.E.2d 844 (Ill. 1986), *on remand*, People v. Wilson, 515 N.E.2d 812 (Ill. App. 1 Dist. 1987), *appeal denied*, People v. Wilson, 522 N.E.2d 1255 (1988); People v. Wilson, 506 N.E.2d 571 (Ill. 1987), *later proceeding*, Wilson v. Chicago, 684 F. Supp. 982 (N.D. Ill. 1988), *summ. judgment denied*, Wilson v. Chicago, 707 F. Supp. 379 (N.D. Ill. 1989), *later proceeding*, Wilson v. Chicago, 710 F. Supp. 1168 (N.D. Ill. 1989); People v. Banks, 549 N.E.2d 766 (Ill. App. 1 Dist. 1989); Wilson v. Chicago, 6 F.3d 1223, *modified*, 1993 U.S.App. LEXIS 31896 (7th Cir. 1993).

13 "Police Commander Fired in Torture Case," *The Washington Times*, Feb. 12, 1993.

defended the department's efforts to combat excessive force:

> In my leadership role as the new superintendent, I am taking every opportunity to send a message that there will be zero tolerance for intolerance, unauthorized force, corruption and physical and verbal abuse in my administration. I intend to provide strong leadership by example, demand accountability and insist on executive supervision. Ideally, the public should look to the police as defenders of their constitutional rights rather than abusers of those rights. Police misconduct has a long and complex history. But we need not be overwhelmed by it.[14]

The Filing, Investigation, and Adjudication of Police Misconduct Complaints

Chicago Police Department's Office of Professional Standards

The Office of Professional Standards registers all complaints of police misconduct and investigates complaints alleging excessive use of force.[15] It also investigates all cases involving injuries to any person as a result of a department member's discharge of a firearm, and conducts preliminary investigations of deaths and attempted suicides in department facilities.[16] All other complaints of misconduct against department members (i.e., verbal abuse, illegal search, and seizure) are forwarded to the Internal Affairs Division. OPS has a 64-member investigative staff.[17]

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14 Rodriguez Testimony, *Chicago Hearing*, vol. 2, pp. 183–84.

15 Gayle Shines, Chief Administrator, OPS, testimony, *Chicago Hearing*, vol. 2, p. 191. CPD, Gen. Order No. 82–14, Addendum No. 2 (effective Oct. 15, 1982). Departmental order provides:

> Police officers, whenever possible, will exercise persuasion, advice and warning prior to the use of non-deadly physical force. If such are found to be ineffective in accomplishing the legal purpose to be served, a member may resort to the use of non-deadly physical force necessary to accomplish the lawful police purpose. The determination of what is or is not reasonable force is based on each individual situation and is a judgment decision that the individual police officer must make. The decision should be based on factors which include but are not limited to the age, size or mental state of the individual, or the availability of assistance as well as the circumstances of the particular situation. The use of excessive force, unwarranted physical force or verbal abuse by a Department member will not be tolerated under any circumstances.
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> CPD, Gen. Order No. 80–18 (effective Dec. 12, 1980).

However, "[a] peace officer. . ., need not retreat or desist from efforts to make a lawful arrest because of resistance or threatened resistance to the arrest. He is justified in the use of any force which he REASONABLY BELIEVES TO BE NECESSARY to effect the arrest and of any force which he REASONABLY BELIEVES TO BE NECESSARY to defend himself or another from bodily harm while making the arrest . . ". CPD, Gen. Order No. 80–18 (effective Dec. 12, 1980) (quoting Illinois Revised Statutes, Chapter 38, Article 7, Section 7-5) (emphasis in original).

Subsequent to the Chicago Hearing, a General Order was issued that provides:

> Members will not exhibit any bias or prejudice against an individual or group because of race, color, gender, age, religion, disability, national origin, ancestry, sexual orientation, marital status, parental status, military discharge status, or source of income. Members will not exhibit a condescending attitude or direct any derogatory terms toward any person in any manner.
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> CPD, Gen. Order No. 92–1 (effective July 4, 1992).

16 Shines Testimony, *Chicago Hearing*, vol. 2, p. 191. OPS, *Police & Public*, p. 2.

17 Shines Testimony, *Chicago Hearing*, vol. 2, p. 192. At the time of the Commission hearing, 47 percent of the OPS investigative staff were black, and 22 percent were Hispanic.

Prior to the creation of OPS, all citizen complaints of police misconduct were registered and investigated by the Internal Affairs Division. The current administrator of OPS explained that: "[t]his system, in the late 1960s and early 1970s began to give way to expressions of public concern about the effectiveness and perceived fairness of sworn officers investigating their peers"[18] Congressman Ralph H. Metcalfe formed a panel of prominent community members to hear testimony on police brutality, and issued a report in 1973 recommending the formation of a new independent investigating agency.[19] The panel's proposal emphasized that: "(a) the new agency should conduct independent investigations and determine facts and that the public have access to the investigations; (b) only certain complaints should be handled by this independent body—complaints of excessive force, other violations of civil rights, and corruption or criminal activity by police officers; (c) the imposition of discipline should remain the responsibility of the Police Board and the Police Superintendent"[20] The following year OPS was organized as part the superintendent's office by executive order,[21] incorporating some of the previous recommendations.

In response to criticisms that OPS had become "ineffective and patronage-ridden" the city instituted some reforms, such as entry-level requirements for investigators of a bachelors degree in criminal justice or a related field and mandatory training.[22] Newly hired investigators receive a minimum of 100 hours of classroom training on department rules, regulations, and orders, as well as investigative techniques.[23] Investigative staff also receive in-service and off-site training and computer and time management course work.[24] Supervisory staff attend week-long course work offered by the city's department of personnel.

OPS lacks subpoena power, unlike some independent civilian review agencies.[25] The chief administrator of OPS testified:

> The structure of the Office of Professional Standards was then, as it is now, comprised totally of civilian investigators reporting to a civilian administrative staff. Unlike civilian oversight agencies that remain outside of the department and often experience a lack of authority and cooperation from within the department in effectively investigating complaints, OPS was, and is today, structured to be within the Chicago Police Department, answering directly and only to the superintendent of police. This structure allows the OPS

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18 Ibid., p. 190. According to the Police Misconduct and Civil Rights Law Report:

> In the aftermath of the December 4, 1969 Black Panther police raid, the Internal Affairs Division of the Chicago Police Department conducted a sham investigation that was subsequently condemned by a Federal Grand Jury investigating the raid as a "complete whitewash." These events caused the police disciplinary agency to come under public scrutiny, and public criticism increased in the early 1970s when Congressman Ralph Metcalfe conducted public hearings into police brutality in Chicago. In response to this, the Office of Professional Standards was created. Heralded by its proponents as an example of civilian review, it was carefully designed to give that appearance, while retaining police control over discipline.

Taylor, *Proof On Police Failure to Discipline Cases: A Survey (Part 2 of 2)*, 3 Police Misconduct and Civ. Rts. L. Rep., 42 (1990).

19 Petterson, "Police Accountability and Civilian Oversight of Policing: An American Perspective," in *Complaints Against the Police* (Oxford: Clarendon Press, 1991), p. 262.

20 Ibid., pp. 262–63.

21 Ibid., p. 263.

22 Bryant v. Whalen, 759 F.Supp. 410, 421 (N.D.Ill. 1991). During his 1983 mayoral campaign, Harold Washington had promised to abolish OPS and replace it with an external complaint system. Petterson, "Police Accountability and Civilian Oversight of Policing: An American Perspective," in *Complaints Against the Police* (Oxford: Clarendon Press, 1991), p. 263.

23 Shines Testimony, *Chicago Hearing*, vol. 2, p. 193.

24 Ibid., p. 193–94.

25 See, e.g., District of Columbia's Civilian Complaint Review Board.

civilian investigators authority to use all the department's resources in investigating complaints, and further requires that all sworn officers under investigation, must cooperate with the OPS investigation or face department sanctions in the alternative.[26]

Police departments' internal mechanisms for handling citizen complaints have long been challenged as being secretive and biased in favor of the accused officers.[27] In an effort to increase the public's involvement and trust in the citizen complaint process, civilian review agencies are being established across the country.[28] A process for civilian review of citizen complaints of police misconduct exists in 32 of the 50 largest cities.[29] Unlike external civilian review agencies in other cities, such as Washington, D.C. and San Francisco, where an external agency conducts investigations and hearings independent of the police department, the Chicago Police Department's OPS is essentially an internal system that includes civilians in the complaint process (referred to as an example of "civilian inclusion").[30]

Offering a critique of OPS, the coordinator of Citizen's Alert, a Chicago police accountability organization, testified:

> The fact that the Office of Professional Standards (OPS) is staffed by civilian investigators and has a civilian administrator does little to offset hostility and reluctance to file complaints with an agency that is an integral part of the police department. Limited information about the progress of investigations only seems to reinforce the complainant's fears that their word against that of an officer will be practically useless. In fact, that's true, unless witnesses are available and willing to speak out, and even when they are, sometimes, the officer's word prevails.[31]

Community witnesses testified to the need for independent investigation of brutality complaints

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26 Shines Testimony, *Chicago Hearing*, vol. 2, pp. 191–92.

27 *See* U.S. Commission on Civil Rights, *Racial and Ethnic Tensions in American Communities: Poverty, Inequality, and Discrimination, Volume I: The Mount Pleasant Report* (January 1993), p. 56 (hereafter CCR, *Racial and Ethnic Tensions*).

28 Civilian review agencies in the United States do not possess the power to impose discipline and can only recommend disciplinary actions to a police chief or a police commission. By contrast, Canadian review agencies, such as Ontario's Board of Inquiry or Quebec's Police Ethics Committee, have the power to impose discipline. CCR, *Racial and Ethnic Tensions*, pp. 56–57.

29 The Commission in its report, *Racial and Ethnic Tensions* stated:

> A 1991 national survey of civilian review in the 50 largest cities classified review procedures according to: (1) who conducts the initial investigation of a citizen complaint, and (2) who reviews the investigative report and who makes a recommendation for action. Based on the above classifications, the survey identified three basic classes of civilian review agencies:
> Class I—Initial investigation and factfinding by nonsworn personnel, review of investigative report and recommendation for action by nonsworn person of board consisting of majority of nonsworn persons. (Examples: District of Columbia's Civilian Complaint Review Board, San Francisco's Office of Citizens' Complaints, Cleveland's Police Review Board/Office of Professional Standards).
> Class II—Initial investigation and factfinding by sworn officers; review of investigative report and recommendation for action by a nonsworn person or board consisting of a majority of nonsworn persons. (Examples: New York's Civilian Complaint Review Board, Houston's Civilian Review Committee, San Diego's Citizen Review Board).
> Class III—Initial investigation and factfinding by sworn officers; review of investigative report and recommendation for action by sworn officers; opportunity for citizen to appeal final determination to a board including nonsworn persons. (Examples: Phoenix's Disciplinary Review Board, St. Louis Board of Commissioners, Omaha's Public Safety Finding Review Board).
> Of the existing civilian review agencies in 32 of the 50 largest U.S. Cities, 37.5 percent (12 agencies) can be categorized as Class I systems; 43.7 percent (14) are Class II systems; 18.7 percent (6) are Class III.
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> CCR, *Racial and Ethnic Tensions*, p. 56, n.77, (citing Walker and Bumphus, *Civilian Review of the Police: A National Survey of the 50 Largest Cities*, 1991, Focus: Criminal Justice Policy (1991), Additions and Corrections (February 1992).

30 Petterson, "Police Accountability and Civilian Oversight of Policing: An American Perspective," in *Complaints Against the Police* (Oxford: Clarendon Press, 1991), p. 277.

31 Powers Testimony, *Chicago Hearing*, vol. 2, p. 18.

by an agency outside of the police department, since the police cannot be relied on to regulate themselves.[32] As an example of the need for independent civilian oversight, a witness testified about a long-unreleased, controversial report, completed in September 1990 by OPS investigators. The report alleged systematic abuse at the department's area 2 over a period studied from 1974–1986 which included psychological techniques and planned torture. It also alleged that particular command members were aware of or participated in the abuse.[33] Mary Powers, of Citizen's Alert, testified:

> There's an excellent recent example of why an independent investigative agency outside the confines of the police department is really essential. . . . When the Office of Professional Standards does an outstanding job, resulting in findings that are unacceptable to the administration, these findings can be subverted. . . . After 2 years of intensive public pressure, the Office of Professional Standards reopened some, and initiated other investigations, of these complaints. . . The findings resulted in the recommendation that the accused officers should be separated from the department. These reports from the Chicago department's own internal investigative unit, the Office of Professional Standards, were undermined, stonewalled and suppressed by the former Superintendent for close to a year.[34]

In February 1992 a U.S. District Court judge ordered the release of the OPS report.[35] The failure to release this significant report underscores for many in the community the need for greater independence and openness in investigations of police brutality.

Complaint and Disciplinary Procedures

Chicago has the highest rate of citizen complaints per 100,000 inhabitants (112.1 complaints per 100,000 inhabitants), of the six largest U.S. cities.[36] Since 1975 OPS has received approximately 2,000 excessive force complaints a year.[37] In 1991, 2,727 excessive force complaints were filed.[38]

Complaints may be filed in person or by telephone at OPS (located across the street from police headquarters) or at any police district.[39] Upon receipt of a complaint, OPS will: (1) register the complaint; (2) prepare a "Complaint Against Department Member and Progress Report"; (3) advise the person filing the complaint of the assigned complaint register number; (4) inform the complainant by mail of the complaint register

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32 Willis Testimony, *Chicago Hearing*, vol. 2, p. 27; Powers Testimony, *Chicago Hearing*, vol. 2, p. 16.

33 OPS, Report of Investigator Michael Goldston, Star #73, Office of Professional Standards, Re: History of Allegations of Misconduct by Area Two Personnel, September 1990; Report of Investigator Francine Sanders, Star #28, Office of Professional Standards, Re: Analysis of *Wilson* Case, September 1991. Chief Administrator of the Office of Professional Standards wrote with respect to these special project reports: "Both Investigators have done a masterful job of marshalling the facts in this intensive and extensive project and their conclusions are compelling" Memorandum from Gayle Shines, Chief Administrator, OPS, to LeRoy Martin, Superintendent of Police, Nov. 2, 1990. *See also* Charles Nicodemus, "Report Cites 12 Years of S. Side Cop Brutality" *Chicago Sun-Times*, Feb. 8, 1992, p. 4; Eric Harrison, "Chicago Police Used Torture, Report Alleges" *Los Angeles Times*, Feb. 8, 1992, pp. A1, A14.

34 Powers Testimony, *Chicago Hearing*, vol. 2, pp. 19–21.

35 Charles Nicodemus, "Report Cites 12 Years of S. Side Cop Brutality" *Sun-Times*, Feb. 8, 1992, p. 4.

36 OPS, *Police & Public*, Table–"Number of Cases Received and Closed".

37 *The* Big Six: Policing America's Largest Cities (Police Foundation 1991), p. 12. Of the six largest U.S. cities, the second highest rate of citizen complaints per 100,000 inhabitants was in Houston (98.2), followed by New York City (70.6), Detroit (64.1), Los Angeles (23.1) and Philadelphia (22.4).

38 OPS, *Police & Public*, Table–"Number of Cases Received and Closed"

39 OPS, *Police & Public*, p. 6.

number, as well as the name of the assigned investigator; and (5) notify the administrators and other OPS members.[40]

Department orders require that "any member who has or is alleged to have knowledge of circumstances surrounding a complaint investigation will submit an individual written report before reporting off duty"[41] The supervisor must forward a copy to the OPS or Internal Affairs Division, as appropriate.

The current average length of time to complete an investigation is approximately 30 days, according to the chief administrator, which "represents a significant improvement over OPS performance in its developing years when more than 90 days were often needed to bring a case to its conclusion"[42] When an investigation is completed, findings are made as follows:

1. Unfounded—allegation is false or not factual;
2. Exonerated—incident occurred but was lawful and proper;
3. Not Sustained—insufficient evidence either to prove or disprove allegation;
4. Sustained—allegation is supported by sufficient evidence to justify disciplinary action.[43]

The vast majority of excessive force complaints are not sustained. As of June 1992, OPS' sustained rate was only 11.1 percent.[44] The sustained rates were 12.2 percent and 7.3 percent for 1991 and 1990, respectively, and in prior years the sustained rate averaged between 5 or 6 percent.[45] A Commission witness testified that OPS rarely reopens cases if they were not sustained after an officer had been found guilty of a civil rights violation in Federal or State court.[46]

Once a complaint is *sustained,* the assigned investigator obtains the accused member's "Summary of Previous Disciplinary Actions" from the Internal Affairs Division, as well as the "Record of Previous Complimentary History" from the personnel division.[47] The Summary of Previous Disciplinary Actions is not used for investigative purposes (i.e., to identify patterns of misconduct) or in determining whether to sustain a complaint. Rather, this documentation becomes part of the basis for OPS recommendation to the superintendent of one of the following actions: (1) Violation noted, no disciplinary action; (2) Reprimand; (3) Suspension for a specific number of days (not to exceed 30); or (4) Separation.[48]

The commanding officer of the investigative unit may also recommend whether the accused member should be retained in his or her present

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40 CPD, Gen. Order No. 82–14, Addendum No. 2 (effective Oct. 15, 1982); OPS, *Police & Public,* p. 3 (hereafter OPS, *Police & Public*).

"Members of the Police department under investigation are presented with specific allegations made against them and afforded administrative or criminal rights and counsel before statements are taken. Sworn members are further afforded the protection of their rights through an agreement with the bargaining unit of the Fraternal Order of Police, Lodge 7 (Bill of Rights)" OPS, *Police & Public,* p. 1.

41 CPD, Gen. Order No. 82–14, Addendum 2 (effective Oct. 15, 1982).

42 Shines Testimony, *Chicago Hearing,* vol. 2, pp. 195–96. At the end of June 1990, 394 OPS investigations were open. By June 1991, 227 investigations were open, and by May 1992, 166 cases were open. Another measure of agency effectiveness is the age of pending cases. As of June 1990, OPS had 140 cases that were more than 60 days old. As of May 1992, there were 10 such cases.

43 CPD, Gen. Order No. 82–14, Addendum 3A (effective Aug. 20, 1984).

44 Shines Testimony, Chicago Hearing, vol. 2, p. 197.

45 Ibid.

46 Willis Testimony, *Chicago Hearing,* vol. 2, p. 27.

47 CPD, Gen. Order No. 82–14, Addendum No. 3A (effective Aug. 20, 1984).

48 Ibid.

assignment, assigned to other duty involving close supervision and limited contact with the public, excused from duty, or immediately suspended.[49]

OPS runs background checks on victims and witnesses that influence a decision to sustain or not sustain a complaint, yet OPS does not apply the same standard to the accused or witnessing officers. The department's Previous Disciplinary Action Summary (reviews sustained complaints over the past 5 years or suspensions for an accused officer) are prohibited from being used in an OPS decision to sustain a complaint, and are not used to determine the credibility of officers' statements. By precluding investigators access to the officer's background during the investigation and determination of a citizen's complaint, this practice severely hampers their ability to identify patterns of misconduct.

One-on-One Rule and an Inconsistent Standard of Proof

Police misconduct cases most often involve only the accused police officer's word against the complainant's. Generally, in a courtroom, if there is a lack of corroborating evidence or independent witnesses, the judge or jury must decide whom to believe. When it is the police officer's word versus the citizen's, OPS generally does not sustain a complaint. This process is commonly referred to as the "one-on-one rule"[50] In 1991, 65.6 percent of excessive force complaints (1,855 out of 2,828 OPS cases closed) were not sustained by OPS; in 1990, 81.6 percent were not sustained (2,136 not sustained out of 2,617 OPS cases).[51] Officers are rarely found guilty of misconduct and disciplined where the uncorroborated victim's version of police misconduct is denied by the accused officer and his or her partner. The officer's complaint or disciplinary history is not considered in this determination. Commission review of 500 citizen complaints of police misconduct and investigations showed that "lack of independent witnesses" was one of the most frequently cited reasons for not sustaining a complaint.

The Independent Commission on the Los Angeles Police Department (commonly referred to as the Christopher Commission) recommended that classification of "not sustained" for complaints should be renamed "not resolved" to more accurately reflect the nature of the determinations. Additionally, since prior determinations may contain information relevant to informed decision making by police management, the Christopher Commission advised that such findings "should be available for review in future investigations, as well as available for consideration at the time an employee evaluation is completed and for purposes of promotions and upgrades"[52] Similarly, the Christopher Commission recommended that "any finding, including unfounded or exonerated, should also be available for nonpunitive purposes such as training, counseling, and assignment.[53]

A code of silence in the police department and the routine denial of charges by the accused officer and partner, as illustrated by the Commission's review of 500 citizen complaints and investigations, produces a system that makes it difficult to address potentially meritorious cases. The result can be an almost insurmountable burden of proof for the average citizen. Offending officers cannot be identified and punished without a properly functioning administrative system. Thus the public's confidence in the police force can be seriously affected, in addition to leaving repeat offenders to violate citizens' rights.

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49 Ibid.

50 Taylor Testimony, *Chicago Hearing*, vol. 2, p. 66.

51 OPS, *Police & Public*, table–"Number of Cases Received and Closed."

52 Report of the Independent Commission on the Los Angeles Police Department (1991), p. 175.

53 Ibid. On Dec. 3, 1991, former Los Angeles Police Chief Daryl Gates issued a directive stating that future "not sustained" complaints would be renamed "not resolved." The remaining part of the recommendation has been the subject of negotiations. Los Angeles Police Department, *Status Report—December 1992, Progress on the Recommendations of the Independent ("Christopher") Commission on the Los Angeles Police Department* (December 1992), p. 84.

Case Histories. Although the standard of proof employed by OPS is a preponderance of the evidence, critics have charged that "many investigators have no grasp of its meaning or application, and instead opt for the "not sustained" finding (i.e., not enough evidence to either prove or disprove) in the vast majority of their cases"[54] The Commission found examples of such cases "not sustained" by OPS.

A male black complainant phoned OPS on July 21, 1991, alleging that the preceding night "a male Asian officer, in casual dress told him to get the 'hell' off the corner, grabbed him in a 'choke hold,' dragged him, handcuffed him too tightly, punched him on the ribs and sternum"[55] He further alleged that "the officer told him 'I should kick your ass' and called the complainant's wife a 'bitch'"[56] Data subpoenaed by the Commission revealed that the accused officer from the Gang Crime Unit North was a "repeater" having been the subject of 21 other excessive force complaints by citizens accumulated from March 1988 through July 1991.[57] In the officer's report, "[h]e denied all allegations lodged against him."[58]

The investigator's finding and recommendation simply stated: "Reporting investigator recommends that this investigation be terminated at this time and labeled Not Sustained because reporting investigator is unable to [arrive] at a positive finding since the complainant and the witness did not make a positive effort to cooperate with the investigation to the fullest extent"[59] The investigator mentioned that the complainant and the witness did not want to visit OPS. However, "[a] complainant need not enter a police facility to either lodge a complaint or to have it investigated"[60] This basis alone would be insufficient to terminate the investigation and render a "not sustained" finding.

Both the complainant and sister-in-law had made themselves available for a followup interview by the investigator. The investigative report was completed on August 18, 1991, and the complainant was due to return to duty in the U.S. Army the first week of August. Additionally, the officer had already been identified. The investigator failed to state how the evidence was insufficient to prove or disprove the allegations of the

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54 Taylor, *Proof On Police Failure To Discipline Cases: A Survey (Part 2 of 2)*, 3 Police Misconduct and Civ. Rts. L. Rep. 43 (1990).

55 Complaint Against Department Member, C.R. No. 185831, July 21, 1991. Quotations from CPD, Summary Report Digest–Complaint Register Investigation No.: 185831, Aug. 18, 1991.

56 Ibid.

57 OPS, List of C.P.D. Member With 5 or More CR-No, Complaint Category 05, Report By Unit, From January 1988 to Up-To-Date, Sept. 19, 1991.

The complainant later provided in an oral interview to an OPS investigator that he, his wife, and sister-in-law had visited 3259 North Sheffield in order to go to a lounge. He had left both his wife and sister-in-law by the car and approached the crowded lounge. The complainant pushed through the crowd into the lounge and asked for fliers regarding upcoming events. While walking back to the car he noticed his wife speaking to a man on the corner, who told his wife that she would have to move from the area where she was standing. The complainant told the man, who was later identified as the accused officer, that "it was a free country." In response, "the accused grabbed him around the neck and dragged him further away from [ ] lounge into a secluded area and his wife followed. He stated that while there the officer began striking him about the body and he was handcuffed at the time." Neither the complainant, his wife, or sister-in-law were arrested. He further stated that the officer called his wife a "floozy." The sister-in-law "provided essentially the same account of the incident."
In the Aug. 18, 1991, investigative report, the investigator indicated that he urged the complainant and his wife "to visit the OPS so that they could view photographs of different units in an effort to identify the accused. They stated that they did not want to visit this office and Mr. [complainant] stated that he did not and would not seek medical treatment."

CPD, Summary Report Digest–Complaint Register Investigation No.: 185831, Aug. 18, 1991.

58 Ibid.

59 Ibid.

60 OPS, *Police & Public*, p. 2.

complaint. No mention was made that a search was conducted at the site of the incident for other witnesses, even though the scene of the incident was an apparently crowded lounge on a Saturday night. There was no discussion why the complainant and concurring witnesses was insufficient in light of the officer's boilerplate denial. In addition, the fact that the accused officer had been subject to 21 other complaints of excessive force, none of which had been sustained by OPS, apparently did not warrant further investigation of the complaint, a recommendation for other nondisciplinary action, or become a factor in weighing the officer's credibility.

In another case, on July 1991, a Hispanic man and his brother and girlfriend exited an expressway. They noticed that they were being tailgated by a white male, later identified as an officer because he was partially in uniform.[61] The officer pulled his car alongside the complainant and called him a "f***ing spic" asked him if he could stay in his f***ing lane and if he knew how to f***ing drive, and that "if he wanted his star number to get out of his car and come and get it"[62] When the complainant left his vehicle, another uniformed white male, found later to be an officer, exited another vehicle and pushed the complainant, while the first officer struck the complainant on the right ear, and called the complainant's girlfriend a "bitch" and told the complainant to leave.[63] When the complainant got back into his car, he told one of the officers that he would report him for misconduct. Subsequently, both officers followed the complainant. The officers "sandwiched" the complainant's car with one car in front and one in back and told the complainant and his brother to exit the vehicle.[64] One of the officers pulled the complainant and his brother out of the car and arrested them for disorderly conduct.

The complainant's brother and girlfriend were interviewed by an OPS investigator and corroborated the complainant's allegations, but added that when one of the officers pulled the complainant out of the car, he tore his shirt and broke his gold chain. The 10th District officers stated in their reports that the complainant and his brother had become "unruly" at the expressway exit, "refused to move their vehicle, and then they fled the scene, and were subsequently arrested for disorderly conduct.[65] They denied the allegations lodged against them" One of the officers had been the subject of seven excessive force complaints from July 1989 through September 1990, all of which were not sustained by OPS.[66] In addition, he had been suspended for 2 days in 1989 for an operation/personnel violation ("inadequate/failure to provide service").[67] The OPS investigator did not sustain any of the allegations and gave no rationale for the findings.

In another situation, a mother filed a complaint on behalf of her high-school-age daughter, alleging that a Chicago police officer struck her daughter "on the left cheek bone with his fist, choked her and pulled her arms behind her back in a very rough manner" and subsequently arrested and

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61 CPD, Summary Report Digest—Complaint Register Investigation No.: 185377, Aug. 15, 1991; CPD, Complaint Against Department Member, No. 185377.

62 CPD, Summary Report Digest—Complaint Register Investigation No.: 185377, Aug. 15, 1991.

63 Ibid.

64 Ibid.

65 Ibid.

66 OPS, List of C.P.D. Member With 5 or More CR–No., Complaint Category 05, Report By Unit, From January 1988 to Up-To-Date, Sept. 19, 1991.

67 CPD, Previous Disciplinary Action Summary.

charged her with disorderly conduct in May 1991.[68] Upon leaving the school, a male black officer on metal detector operation called the three girls back and told them they were supposed to be inside the building. One of the girls asked the officer, "Who are you supposed to be?" upon which the officer allegedly grabbed the girl and the complainant's daughter by the arms, and began pulling and pushing them outside the school.[69] The officer escorted the two girls inside the school and punched the complainant's daughter in the left eye; upon falling to the floor, he grabbed her around the neck and "yanked her up"[70] The complainant's daughter suffered bruises on the wrists and received hospital treatment. The other girl gave a similar account. She did not witness the officer choking the daughter but did see him slap her face, whereupon she tried pulling the officer away which resulted in her being pushed. Neither girl knew the last name of the other witness or how to contact her.[71]

The arrest report reflected that the victim became "unruly and resisted while being escorted into Harper High School by the officer. She was subsequently placed under arrest and charged with [d]isorderly [c]onduct"[72] According to the officer, students were instructed not to leave the building. He was unaware that the girls had been instructed by school personnel to return home and change clothes. "They refused to return inside the building at which time Officer placed his hand on [victim's] shoulder, and she began flinging and swinging her arms in a motion for him to release her. Officer [g]rabbed [victim] near her neck and one arm and proceeded to handcuff her"[73]

In not sustaining the complaint, the OPS investigator provided: "There is no additional evidence to substantiate the allegations made by [victim] other than the account given by her friend [ ]. All the involved officers, five, along with the Youth Officer [were present in District youth Office when victim was processed for disorderly conduct], gave an account of the incident which supports Officer therefore this investigator recommends a finding of Not Sustained"[74] The OPS investigator failed to explain why the hospital report which indicated that the victim's left facial area was tender and swollen, did not constitute additional competent evidence in support of the victim's allegations.

In a final example, an investigation of a complaint from a woman who alleged that she was verbally abused and detained for 2 hours by the police. The Internal Affairs Division found: "The undersigned [investigating sergeant] finds that while the complainant appears very credible, there is no *clear and convincing evidence* by which to sustain allegations of verbal abuse, threats, conspiracy, and a failure to give identification of being Chicago Police Officers. . . . [W]hereby there is not independent and convincing evidence to either prove or disprove the charges, the undersigned has no alternative but to not sustain the allegations"[75] Instead of applying the required preponderance of evidence standard, the investigator's inappropriate application of a clear

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68 Complaint Against Department Member, C.R. No. 184309. The complainant's daughter stated that she and two of her girlfriends were sent home by the school guard for being improperly dressed. CPD, Summary Report Digest—Complaint Register Investigations No. 184309, Aug. 14, 1991.

69 Ibid.

70 Ibid.

71 Ibid.

72 Ibid.

73 Ibid.

74 Ibid.

75 CPD, Summary Report Digest, Complaint Register Investigation No.: 184190, June 12, 1991 (emphasis added)

and convincing evidence standard is a greater burden of persuasion.[76]

Disciplinary Review Procedures and Analysis

Among the small percentage of excessive force cases sustained by OPS (11.1 percent), even fewer ultimately result in the discipline. In the event that OPS or IAD sustains a case, the following review procedures occur:

1. *Command Channel Review*—the case is reviewed by the accused's commanding officers for their concurrence or nonconcurrence.[77]

Only 3.4 percent (17) of the 500 citizen complaint investigations reviewed by Commission staff, were sustained, and in those sustained cases, command personnel who reviewed the investigations of OPS or IAD did not concur about one-half (51 percent) of the time.

2. *Complaint Review Panel*—The accused has 3 days within which to accept OPS' disciplinary recommendation or request a hearing before the Complaint Review Panel (consisting of the accused officer's peers) to review the case. The panel recommends whether the charges should result in a finding of unfounded, exonerated, not sustained, or sustained.[78]

The Commission staff analyzed the final disposition of excessive force cases[79] sustained by OPS from January 1987 through June 1992 and found that in the majority of these instances the Complaint Review panel did not concur with the findings of the civilian OPS unit.[80] More specifically, the Complaint Review Panel overturned cases that found officers guilty of excessive force or sought to lessen the recommended penalty, as follows:

Not sustained in 41.0 percent of OPS excessive force cases it reviewed;

Decreased OPS penalty in 23.1 percent of the cases;

Exonerated in 5.6 percent cases.

The Complaint Review Panel, unlike the superintendent of police as discussed below, never recommended a stiffer penalty for the officer.[81]

3. *Superintendent's Decision*—After the Complaint Review Panel hearing, the department advocate sends a summary of the hearing to the superintendent for final decision.[82]

In contrast to complaint review panels (review by group of peers), the superintendent of police has

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76 E. Cleary, McCormick on Evidence 959–61 (3d ed. 1984). The traditional burden of persuasion in civil cases is "by a preponderence of evidence." Yet, the special standard of persuasion of "clear and convincing evidence" has been applied in a limited range of claims (i.e. charges of fraud and undue influence, suits on oral contracts to make wills or to establish the terms of a lost will, suits for the specific performance of an oral contract), which the party "is required to establish by a more exacting measure of persuasion."

See also People v. Wilson, 506 N.E.2d 571, 575 (Ill. 1987) (where defendant injured while in police custody, State required to show, by clear and convincing evidence, that injuries were not inflicted as means of producing confession).

77 OPS, *Police & Public*, p. 4; CPD, Gen. Order No. 82–14, Addendum 4A (effective Aug. 20, 1984).

78 OPS, *Police & Public*, p. 4; CPD, Gen. Order No. 82–14, Addendum No. 4A (effective Aug. 20, 1984).

79 These included cases sustained for officers' violations of rule 8 ("Disrespect to or maltreatment of any person, while on or off duty") and rule 9 ("Engaging in any unjustified verbal or physical altercation with any person, while on or off duty") which both "prohibit the use of any excessive force by any member" These rules prohibit all brutality, and physical or verbal maltreatment of any citizen while on or off duty, including any unjustified altercation of any kind. City of Chicago, Department of Police, Rules & Regulations 16 (1975).

80 OPS, Final Disposition of O.P.S. Sustained Cases, January 1987—June 1992 (hereafter *OPS Final Disposition*).

81 Ibid.

82 OPS, *Police & Public*, p. 4.

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excessive force cases reviewed over the January 1987 through June 1992 period.[83] There was a request to increase the penalty in 11.8 percent of the sustained cases the superintendent review. Although a former superintendent recommended increasing a penalty in only two instances in 1987, by June 1992 the present Superintendent recommended a more serious penalty in 12 instances.[84] In 8.9 percent of sustained cases reviewed, the superintendent recommended a contrary finding of "not sustained" and in 1 percent of the cases he recommended a finding of "exonerated"

4. Police Board Review and Final Action—If the disciplinary action is for a maximum of 5 days suspension the superintendent's action is final. If the suspension is 6–30 days and the member requests police board (consisting of civilians) review, the Chicago Police Board may confirm or overturn the superintendent's decision.[85]

5. Police Board Hearing and Final Action—When the superintendent seeks to discharge an officer or civilian employee, or to suspend for more than 30 days, he files charges with the police board.[86] The officer has the right to be represented by counsel, to cross-examine witnesses, and present evidence in his or her own defense.[87] A hearing officer presides over the hearings, and the corporation counsel represents the superintendent.[88] Five of the nine board members are required to sustain a superintendent's recommendation to discharge a police officer.[89] The board may also recommend a lesser penalty.[90] The board's decision is based upon a review of the hearing transcripts.[91] If the superintendent or police officer disagrees with the board's decision, they have a right to appeal to the Circuit Court of Cook County.[92]

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83 *OPS Final Disposition.*

84 Ibid. With respect to the superintendent's review of sustained excessive force cases, the superintendent recommended a more stringent penalty than that recommended by OPS in 2 instances in 1987, 4 in 1988, three in 1989, 7 in 1990, 8 in 1991, and 12 as of June 1992.

85 OPS, *Police & Public*, p. 4.

86 City of Chicago Police Board, *1990 Annual Report*, p. 6.

87 Ibid.

88 Ibid.

89 Ibid.

90 Ibid.

"[O]f the 37 excessive force cases decided by the Board [in 1990], only 11 involved instances where the Superintendent sought a penalty of more than 30 days. But the Board does not appear to have authority legally to increase 'penalties' in excessive force cases. The Board has not hesitated to identify excessive force cases for the Superintendent where it believes he was not seeking a sufficiently stringent penalty. Even if the Board has such authority, its discretion in excessive force cases ultimately is circumscribed by the courts and arbitrators. For example, in a 1990 excessive force case the Board sustained a 30 days penalty imposed by the Superintendent, and indicated in the decision it would have imposed a substantially greater penalty if it had the authority to do so. However, the 30 days' penalty imposed was subsequently reduced by an arbitrator to 10 days."

Ibid., pp. 16–17.

91 Ibid. p. 6.

92 Ibid. A decision of the police board should not be set aside by a reviewing court unless the opposite conclusion is clearly evident. Upon review of an administrative agency's findings, courts can only set aside such findings if they are against the manifest weight of the evidence. Everly v. Chicago Police Board, 456 N.E.2d 992, 996 (Ill.App. 1 Dist. 1983) (sufficient evidence to support police board's decision to discharge officer in shooting of 14-year-old boy).

Commission analysis found that the police board overturns a majority (67.9 percent) of excessive force cases that recommend discharging of the officer. Data subpoenaed by the Commission for the hearing revealed that from January 1987 through June 30, 1992, out of 53 excessive force cases heard by the police board where the most stringent penalty was recommended by the superintendent (separation from the force), the police board actually discharged the officer or employee in only 17 cases.[93] In 23 instances, the officer's penalty was reduced from discharge to suspension; in 7 cases the officer was found not guilty; and in 6 cases the charges were withdrawn.[94]

In the police board's suspensions review cases (suspensions of 6–30 days only) of excessive force reports over the same time period, out of 111 excessive force cases, 79 sustained the superintendent's suspension and penalty, 3 were reduced, and 29 officers were exonerated.[95]

Repeat Offenders and the Early Warning System

Officers and Police Districts Repeatedly Named In Citizens' Complaints of Police Misconduct

Witnesses testified to the major problem of "repeaters" within the Chicago Police Department. These are officers who are consistently named in citizens' complaints of police misconduct. A civil rights attorney testified:

> [W]hat our discovery, in cases, has found is that a relatively small proportion of officers are repeatedly committing acts of violence and repeatedly being complained against and repeatedly being exonerated by the system. Although the system does recognize, in one sense, that there is a problem with these people, the system is unwilling or unable to deal with them. . . . And by repeatedly, I mean some of them have 60, 70, 80, 90 complaints of police brutality against them over a 10 to 15 year period.[96]

Commission analysis revealed that a relatively small number of Chicago Police Department officers are repeatedly named in excessive force complaints. During January 1988 to September 1991, 604 officers had five or more excessive force complaints filed against them.[97] Moreover, the 25th

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93 *OPS Final Disposition.*

94 Information submitted pursuant to subpoena to the U.S. Commission on Civil Rights by Mark Iris, Executive Director, Chicago Police Board, June 25, 1992. "[S]ome officers choose to resign rather than submit to a Board hearing. In these cases where an officer resigns, the Department withdraws its charges" Matt L. Rodriguez, Superintendent of Police, letter to Rosalind D. Gray, Acting General Counsel, U.S. Commission on Civil Rights, May 23, 1994, p. 3 (hereafter Rodriguez Correspondence).

95 Ibid.

96 Taylor Testimony, *Chicago Hearing*, vol. 2, p. 6.

97 CPD, Graph By Unit of Accused (C.P.D. Member), Complaint Category 05 [excessive force], Report No. DPOL9350-00-1, Sept. 19, 1991.

Police District had the most excessive force repeaters—41 officers received five or more complaints of excessive force during this time period.[98] These 41 repeaters were responsible for 326 complaints, of which only 3.1 percent were sustained by OPS.[99] The Seventh Police District had the second highest number of excessive force repeaters (34), followed by the 14th and 10th districts, each with 31 repeaters, and the 18th district with 29 repeaters.[100]

Commission analysis of other data, such as verbal abuse complaints, civil rights violation complaints, total complaints, and discretionary arrests, reveal an emerging pattern among the police districts. Over the 1987—May 1992 period, the Seventh Police District had received the highest number of excessive force complaints (687), civil rights violations complaints (108), and total citizen complaints (1,678); the second highest number of excessive force "repeaters" (34) and verbal abuse complaints (134), and civil suits (10); and the third highest number of arrests for resisting arrests (131).[101] This district is in a predominantly African American neighborhood in Englewood. The Commission examined crime and dispatch trends on a district-by-district basis for factors which may account for differences in citizen complaints among the police districts. The seventh district ranked seventh in crime.[102] The seventh district did, however, rank the highest in the number of dispatches (125,014) in 1991, which may account, in part, for the high rate of citizen complaints.[103]

The 14th district, a predominantly Hispanic neighborhood on the near northwest side, exhibited a similar disturbing pattern. Over the 1987–May 1992 period, the district had received the second highest number of excessive force complaints (683) and ranked third in excessive force "repeaters" (31) and total citizen complaints (1,404).[104] It also had the highest number of arrests for resisting arrests (209) from 1989 to 1991.[105] Unlike the Seventh District, the 14th District ranked considerably lower in its crime rate (11th),[106] as well as its number of dispatches in 1991 (12th with 115,445).[107]

In reference to patterns of complaints among individual officers, subpoenaed data revealed that

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98 OPS, List of C.P.D. Member With 5 or More CR-No., Complaint Category 05, Report By Unit, Sept. 19, 1991. *Compare* CCR, *Racial and Ethnic Tensions*, p. 28 (The Commission found that 10 percent of Washington, D.C.'s Metropolitan Police Department officers were named in citizens complaints of police misconduct each year. Of the officers named in complaints in 1991, 47 officers had been cited in more than five citizen complaints over 1985–1991 period); report of the independent commission on the los angeles police department (1991), p. 36 (found 44 LAPD officers had received six or more allegations of excessive force or improper tactics during 1986–1990).

99 Ibid. The vast majority of the 326 excessive force complaints were not sustained (i.e. insufficient evidence to prove or disprove the allegations of excessive force)—81.6 percent (266), 4.9 percent (16) unfounded (i.e., the allegations were false or not factual); 0.9 percent (3) exonerated (the incident occurred but the officer's behavior was lawful and proper), and 9.5 percent (31) pending.

100 Ibid.

101 IAD, Complaint Register Investigations Per Accused Member's Unit of Assignment, Cumulative Closed Cases 1987–May 1992; Chicago Police Department Arrest Files 1989–1991.

102 CPD, *Annual Report 1990*, p. 5 (I-UCR Index Crimes By District and Area). The Illinois Uniform Crime Reports cover the following reported offenses: murder, criminal sexual assault, robbery, aggravated assault, burglary, theft, motor vehicle theft, and arson.

103 CPD, Year to Date Dispatches By Rank, 1991 (hereafter *Year to Date Dispatches, 1991*).

104 CPD, Internal Affairs Division, Complaint Register Investigations Per Accused Member's Unit of Assignment, Cumulative Closed Cases, 1987–May 1992.

105 CPD, 1989–1991 Arrest Files.

106 CPD, *Annual Report 1990*, p. 5.

107 *Year to Date Dispatches, 1991*.

a male black officer in the Public Housing Unit North (Unit 765) accumulated 25 excessive force complaints from February 1988 through April 1991. None of these reports were sustained by OPS.[108] A male Hispanic officer in the 14th district accumulated 21 citizen complaints during January 1988 through November 1990. Similarly, no complaint was sustained by the OPS.[109] An Asian officer in the Gang Crime Unit North (unit 760) amassed 21 excessive force complaints from March 1988 through July 1991, with no complaint sustained.[110] A male Asian detective assigned to the Detective Division, Area 4 Violent Crimes (unit 642) amassed 19 excessive force complaints from July 1988 through May 1991. OPS did not sustain any of these complaints.[111] Despite the frequency of excessive force complaints among these and other officers, OPS determined that no evidence supported the citizens' allegations of excessive force and consistently found no justification for disciplinary action.

A major impediment in addressing the problems is that the disciplinary records of officers are purged after 5 years. This is required under the police union contract with the Fraternal Order of Police.[112] A witness testified:

> [I]n some cases, it's only because I have sued, or our office has sued, someone 10 or 15 years ago and got their records, received a settlement for a serious injury and then have this officer come around again in another case, and get his records again, and be able to piece together his records in a way that the police department doesn't even track.[113]

The witness further reported: "[I]t's a portion of the illegal and unconstitutional policy and practice to destroy evidence that tends to show, and give them notice of the degree of misconduct and the length of time of misconduct. . . . It's something that the police department willingly gave up to the union, because the union wants to protect its officers from disciplinary action"[114]

The superintendent acknowledged: "Police Departments need to become more proactive and preventive in monitoring their conduct, and need

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108 Ibid. Twenty-one cases were not sustained, three unfounded, and one exonerated. *Compare* CCR, *Racial and Ethnic Tensions*, p. 28 (analyzing multiple complaint officers within Washington, DC's, Metropolitan Police Department over 1985–1991 period).

109 Ibid. Eighteen of the 21 excessive force cases were not sustained by OPS; one unfounded; one exonerated; one case had no finding.

110 Ibid. Eighteen excessive force cases were not sustained, two were unfounded, one case had no finding listed.

111 Ibid. Sixteen cases were not sustained, two unfounded, and one case had no finding.

112 Pursuant to the agreement between the police department and the Fraternal Order of Police, Chicago Lodge No. 7:

> "Disciplinary Investigation Files, Disciplinary History Card Entries, OPS disciplinary records, and any other disciplinary record or summary of such record other than Police Board cases, *will be destroyed five (5) years after the date of the incident or the date upon which the violation is discovered*, whichever is longer, and therefore cannot be used against the officer in any future proceedings in any other forum, unless the investigation relates to a matter which has been subject to either civil or criminal court litigation or arbitration prior to the expiration of the five year period. In such instances, the Complaint Register case files normally will be destroyed five years after the date of the final arbitration award or the final court adjudication, unless a pattern of sustained infractions exists.
>
> "Any information of any adverse employment nature which may be contained in any unfounded, exonerated or otherwise *not sustained file, shall not be used against the officer in any future proceedings*.
>
> "Any record of summary punishment may be used for a period of time not to exceed one (1) year (three (3) years in the case of vehicle license violations) and shall thereafter not be used to support or as evidence of adverse employment action."
>
> Agreement between the city of Chicago, Department of Police and the Fraternal Order of Police, Chicago Lodge No. 7, Section 8.4, May 7, 1990 (emphasis added).

113 Taylor Testimony, *Chicago Hearing*, vol. 2, p. 9.

114 Ibid., pp. 43–44.

TABLE 10.1
Number and Cost of Police Claims, 1987–1991

Year	Total	Total with payment	Total without payment	Damages*	Fees/costs
1987	434	205	229	$4,301,554.50	$290,747.46
1988	343	177	166	13,069,698.08	272,049.45
1989	385	251	134	4,480,150.76	1,060,819.39
1990	236	170	66	5,878,287.59	349,859.27
1991	312	193	119	3,075,045.26	232,724.21

* May or may not include fees and costs as part of settlement, according to the Chicago Police Department.

Source: Data obtained from Chicago Police Department.

to be continuously alert to the emergence of misconduct patterns of potential chronic offenders"[115]

The liability of not adequately identifying and addressing the problems of repeaters and brutality within the department is significant.[116] Of the 312 total police claims disposed of in 1991, 193 claims cost the city $3,075,045.26 in damages and $232,724.21 in fees and costs. The city has paid more in previous years. The results of police claims closed from 1987 through 1991 are shown in table 10.1.

Early Warning System

Since 1983 the department has operated an early warning system that encompasses the "Behavioral Alert System" and "Personnel Concerns Program" Despite the existence of such programs, the president of the police board testified as to the present need for an early intervention system since "we . . . need an early intervention system that catches these officers. . . . [B]y the time a case gets to us, whether it's excessive force or drugs or alcohol . . . there's been a problem there for some time that has festered . . . ."[117]

The Behavior Alert System is defined as a "systematic review of a department member's behavior pattern to alert supervisors to the need for intervention"[118] The following are "behavioral alert indicators":

1. all excessive force complaints,
2. complaint and disciplinary history,
3. repeated incidents of medial roll use,
4. repeated instances of minor transgressions within a 12-month period,
5. a significant reduction in a member's performance,
6. poor Department traffic safety record,
7. significant deviations from the member's normal behavior.[119]

When a member has been identified by the above indicators by the watch/unit commander, he or she (1) must review all relevant unit records concerning the member's work performance and disciplinary history; (2) consult with other unit supervisors; and (3) meet with the member to: (a) inform the member that his or her behavior is unacceptable, (b) identify causes of the behavior, (c) provide guidance and assistance, (d) determine

115 Rodriguez Testimony, *Chicago Hearing*, vol. 2, p. 184.

116 *See* David Jackson and William Gaines, "When Is a Tough Policeman a Brutal Policeman?" *Chicago Tribune*, Apr. 14, 1991, p. 7.

117 Maule Testimony, *Chicago Hearing*, vol. 2, p. 160.

118 CPD, Gen. Order No. 83–3 (effective Mar. 9, 1983).

119 Ibid.

if other action is warranted, and (e) advise that future performance will be closely monitored and continued unacceptable behavior will not be tolerated.[120] A written record must be prepared of this meeting, a copy which is kept in the file of the unit commander of exempt rank for 1 year and copy to the Personnel Concern Program manager (PCP manager) who oversees the program.[121] If there is a recurrence of a Behavioral Alert System indicator within a 12-month period, the steps should be repeated and the matter should be brought to the attention of the unit commander of exempt rank. When all efforts to resolve a behavioral problem are unsuccessful, the unit commander of exempt rank must recommend that the member be designated as a personnel concern.[122]

The Personnel Concerns Program is a "program of intensive supervision of department members who have been designated as personnel concerns"[123] A "personnel concern" is defined by department order as a "Department member who has a history of unacceptable performance, and who has not been responsive to repeated corrective efforts of supervisory members"[124] A personnel concerns conference is held after the director of personnel determines a department member's status as a personnel concern. This involves the unit commander of exempt rank, the watch/unit commanding officer, the PCP manager, a personnel concerns supervisor (a specially trained supervisor responsible for monitoring, evaluating, and improving the performance of the assigned personnel concern), and the member designated as a personnel concern.[125] The PCP manager provides written notification to the member of his or her deficiencies and status, then indicates that future performance will be closely supervised by the department. If improvement does not result, necessary documentation is provided, and a case is prepared for presentation to the police board.[126]

Unlike other early warning systems being developed in large urban law enforcement agencies, Chicago's Behavior Alert System is not a centralized, integrated, computerized data base which automatically identifies those members exhibiting certain patterns of behavior based on the behavioral alert indicators.[127] Rather, Chicago's system is primarily dependent on the watch/unit

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120 Ibid.

121 Ibid.

122 Ibid.

123 Ibid.

124 Ibid.

125 Ibid.

126 Ibid.

127 For example, in response to a recommendation of the Independent Commission on the Los Angeles Department, the LAPD will develop a computerized system to track each officer's full complaint, use of force and traffic accident history. In addition, the system will provide information on pursuits, civil litigation, officer-involved shootings and sick/injured-on-duty information. This system is named the Officer Behavior Indicator Tracking System (OBITS). Using OBITS, supervisors and commanding officers will have access to current and past data on officers directly under their supervision. This will assist them in detecting patterns and "early warning" signs of problematic behavior. Los Angeles Police Department, Status Report—*December 1992. Progress on the Recommendations of the Independent ("Christopher") Commission on the Los Angeles Police Department* (December 1992).

Similarly, in its response to recommendations of the report by Special Counsel James G. Kolts & Staff, the Los Angeles County Sheriff's Department stated that it has been developing the "OPES II" system. "OPES II will provide an integrated database to centrally store all information related to Watch Commander's Service Comment Forms, uses of force, officer-involved shootings, administrative investigations, government tort claims, public complaints, and Pitchess Motions. This will include an early warning system to flag or identify instances or occurrences that meet predefined criteria and thresholds. This system will provide Department managers with a 'triggered' review of employee conduct, allowing them to design action strategies for the 'at risk' employee identified through the system." The Los Angeles County Sheriff's Department, A Response to the

commanding officers to monitor members of their command who exhibit behavioral alert system indicators.[128] Moveover, the behavior alert indicators are not defined in precise, quantitative terms. Insufficient guidance is provided on how these factors should be applied, and the threshold that must be met before a member's behavior warrants serious attention.[129] Consequently, of the 221 Department members identified in the Behavioral Alert System, only 10 (4.5 percent) were due to excessive force.[130] The Personnel Concerns Program had only 50 participating Department members, of which only two (4 percent) cases due to reasons of excessive force.[131] By contrast, Commission staff's analysis identified 604 officers who were repeatedly the subject of excessive force complaints, some of which received as many as 25 such reports. The system has failed to operate as an "early warning" for management.

The Chicago Police Department's failure to automate their records on police use of excessive and deadly force[132]—has undermined management's ability to monitor early intervention. In addition, the union contract's provision regarding the purging of officer's disciplinary records is another major impediment to the Chicago Police Department's ability to monitor its officers. "While officers need to be treated with respect and trust befitting the enormously complex and challenging work they are asked to do, it seems odd indeed that management would agree to blind itself to highly influential, critical incidents in the professional (and personal) life of its employees in the spirit of fairness to workers."[133]

Kolts Report (October 1992), p. 95.

128 See Bonsignore v. City of New York, 683 F.2d 635, 637 (1982) (emphasis added). The court found substantial evidence to support the jury's finding that the City of New York was negligent because of deficient procedures for identifying officers who should not carry weapons. The city had instituted an "Early Warning System" for identifying problem officers "by the use of centrally maintained files, on which such information as excessive sick leave, complaints, and poor performance evaluations would be noted by placing colored dots manually on the files" The Early Warning System was found ineffectual, in part because "[t]he evidence indicated that *a 'code of silence' among policemen, which inhibits an officer from reporting or in any way causing harm to a fellow officer, doomed the system, since it relied in great measure on affirmative reporting by policemen.*"

129 Under Chicago's early warning system, OPS is also responsible for notifying the unit commander when a member receives an excessive force complaint, and the Personnel Concerns Program Manager (a sworn supervisor designated by the Personnel Director to oversee the Personnel Concerns Program) must forward behavioral alert systems indicators that come to his or her attention to the appropriate unit commander. CPD, Gen. Order No. 83–3 (effective Mar. 9, 1983).

130 CPD, Behavioral Alert System, June 19, 1992. The remaining Department members were identified by the Behavioral Alert System for the following reasons: medical, disciplinary [not specifically excessive force], performance, domestic violence, and other.

131 CPD, Personnel Concerns Program, June 19, 1992.

132 William A. Geller and Michael S. Scott, *Deadly Force: What We Know: A Practitioner's Desk Reference on Police-Involved Shootings* (Washington, DC: Police Executive Research Forum, 1992), p. 36.

133 Ibid., p. 37.

Chapter 11. Code of Silence

According to some, the investigation and adjudication of police misconduct complaints is particularly hampered, by the presence of a "code of silence" among the officers. Attorney Flint Taylor remarked:

> The police code of silence is another major problem within the Department with which the OPS fails to deal. At least one Federal judge, [a former] Superintendent, and one former OPS Administrator all agree the code of silence exists .... Nonetheless, many investigators steadfastly refuse to concede its existence, there is no training or guidelines on the subject, and the code is not considered when an investigator makes credibility determinations. Moreover, the OPS's admitted policy and practice of entering a not sustained finding in virtually all cases where the officer's and his partner's version is matched "one on one" with the victim's further institutionalizes the code and assures its continued success. If complaints were sometimes sustained in such circumstances, and fellow officers were disciplined for filing false reports when they supported their fellow officer's discredited story, and for failing to report misconduct, the code of silence might not be so effective in subverting police discipline and encouraging police violence.[1]

When questioned at the Commission hearing about the existence of a code of silence in the CPD, Police Superintendent Matthew Rodriguez responded that there is not "a code of silence . . . a typical generalization such as that," but that nevertheless, the department has had "some difficulty with, what I would call, disinclination on the part of individuals, . . . to turn in their, and this is the way I view it, their fellow officers or to report violations by rules and regulations."[2] Superintendent Rodriguez continued that it was unfair to place this stigma on just police officers, as it was probably prevalent in other professions.[3] Moreover, he noted that he had seen positive signs of improvement.[4]

Several prior lawsuits have documented the existence of a code of silence in the Chicago Police Department. For instance, a Federal judge made the following references to a code of silence during a sentencing hearing in 1983 involving several Chicago policemen convicted of charges, including aiding and abetting Federal narcotics violations:

> [P]olicemen never turn each other in, the code of silence. And, in fact, it is not simply a code of silence; it is a code of mutual cooperation. Not only will policemen not testify against each other, but they come to the assistance of a fellow officer who gets in trouble.
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> . . . [I]t . . . was even admitted here from the witness stand, that there is a code of silence, and that most policemen observe it. Those policemen who testify against others are usually in the intelligence units, and that's their very job, to attain evidence of illegal activity by other policemen, and I get the general impression that the policemen who are members of such units are not the most popular members of the force.[5]

The existence of a code of silence in the Chicago Police Department was evident in *Jones v. City of Chicago*.[6] *Jones* involved a civil suit for damages

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1 Flint Taylor, "Proof on Police Failure to Discipline Cases: A Survey," *Police Misconduct and Civil Rights Law Report*, pp. 43–44 (July–August 1990).

2 Rodriguez Testimony, *Chicago Hearing*, vol. 2, p. 140.

3 Ibid., pp. 140–41.

4 Ibid.

5 United States v. Ambrose, 740 F.2d 505, 521–22 (7th Cir. 1984).

6 856 F.2d 985 (7th Cir. 1988).

arising from the wrongful arrest, jailing, and prosecution, of a young African American man, George Jones, wrongly accused of raping and murdering a 12-year old girl in his neighborhood. At the time of his arrest, Jones was a senior in high school. Being unable to post bond, Jones remained in jail for a month pending trial and "had to fight off a rape attempt, was beaten up by gang members, and was forced to join a gang for self-protection, a process that included a brutal initiation rite."[7] Jones' prosecution was dropped when a detective apprised the defense of exculpatory memoranda in the possession of the police. While commended by the Seventh Circuit Court of Appeals,[8] "the detective was charged with a disciplinary infraction for having failed to advise the State attorney that he planned to testify for the defense in George Jones's criminal trial should that become necessary."[9] The court noted that "[n]one of the defendants has been disciplined for misconduct in the arrest and prosecution of George Jones."[10]

The code of silence is not unique to the Chicago Police Department. In its report on the Los Angeles Police Department, the Christopher Commission stated that "[p]erhaps the greatest single barrier to the effective investigation and adjudication of complaints is the officers' unwritten code of silence. . . . [A]n officer does not provide adverse information against a fellow officer."[11] The report quotes a former LAPD officer as saying: "When an officer finally gets fed up and comes forward to speak the truth, that will mark the end of his or her police career. The police profession will not tolerate it, and civilian authorities will close their eyes when the retaliatory machinery comes down on the officer."[12] Likewise, a code of silence was documented within the Memphis Police Department in 1986 in the case of *Brandon v. Allen*.[13] The court stated "[T]here was throughout the Department a code of silence binding patrolmen and supervisors alike not to testify against or report on their colleagues. That code was enforced by peer pressure, and tacitly sanctioned by the refusal of the Department to impose on its employees any obligation to disclose, even under questioning, misconduct by their fellow officers."[14]

Law enforcement critics Jerome Skolnick and James Fyfe, acknowledge the existence of such a code in law enforcement agencies in their book, *Above the Law*:[15] "[T]he code—and there is a code—typically is enforced by the threat of shunning, by fear that *informing* will lead to exposure of one's own derelictions, and by fear that colleagues' assistance may be withheld in emergencies."[16]

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7 *Id.* at 990.

8 "[I]t appears that [the detective] went above and beyond the call of duty, and properly upheld the highest ethical standards of the United States justice system, when he notified . . . defense counsel of the CPD's failure to fully investigate the case and turn over potentially exculpatory evidence. In the opinion of this court, the CPD should consider entering a commendation in [the detective's] personnel file for his adherence to the principles of honesty, decency, and justice."

Id. at 564 n. 3.

9 856 F.2d 985, 991. "He was also transferred out of the detective division, ostracized by his fellow officers, and assigned to a series of menial tasks culminating in the monitoring of police recruits giving urine samples." *Id.*

10 *Id.* For further discussion of the code of silence in the CPD, *see* "Code of Silence' Kept Cop Mum, Bribery Trial Told," *Chicago Tribune*, Chicagoland, p. 3, Oct. 17, 1988.

11 Report of the Independent Commission on the Los Angeles Police Department (1991), p. 168.

12 Ibid., p. 170 (quoting a *Los Angeles Times* column on July 2, 1991).

13 645 F. Supp. 1261 (W.D. Tenn. 1986).

14 *Id.* at 1266–1267 (citations omitted).

15 Jerome H. Skolnick and James J. Fyfe, *Above the Law[:] Police and the Excessive Use of Force* (1993).

16 Ibid., p. 110 (emphasis in original).

Numerous recommendations have been put forth as a means of eliminating the code of silence. Paul Hoffman, legal director of the ACLU Foundation of Southern California, has suggested several possible remedies, such as legislation to eliminate the law enforcement officials' immunity from liability for perjury, legislation to make it a Federal crime to fail to report police abuse, and legislation to prohibit retaliation against police officers who breach the code of silence.[17]

Secrecy of Disciplinary Process Versus Public Accountability

Department order mandates that OPS must "safeguard" the complaint files and allow access *only* to the superintendent, deputy superintendents, and a few others, including department members designated by written order of the superintendent.[18] This restriction effectively insulates the police department from public scrutiny.

Other independent civilian review agencies are more open and accountable to the public. In order to recognize the importance of maintaining public trust in the system, under D.C. law, the District of Columbia Civilian Complaint Review Board should maintain an official record of all complaint proceedings, which must be available to the public.[19] In establishing the City of Virginia Beach Investigation Review Panel, the City Council of Virginia Beach resolved that the identity of the particular officer and the nature of the discipline imposed should be a matter of public record.[20] As such, the findings and recommendations of Virginia Beach's Investigation and Review Panel are available to the public.[21] Oakland California's Citizens' Complaint Board's files are public records, with the exception of files provided by the police department and medical records.[22]

A new Illinois law has improved the accountability of police disciplinary agencies to the public. As of January 1, 1993, each police disciplinary board or entity must publish an annual status report on its investigations of allegations of unreasonable force.[23] A status report must include:

(1) the number of police officers against whom an allegation of unreasonable force was made,
(2) the number of allegations of unreasonable force made against each such police officer,
(3) the number of police officers against whom disciplinary charges were filed on the basis of allegations of unreasonable force,
(4) a listing of investigations of allegations of unreasonable force pending as of the date of the report, together with the dates on which such allegations were made, and
(5) a listing of allegations of unreasonable force for which the board has determined not to file charges. These status reports shall not disclose the identity of any witness or victim, nor shall they disclose the identity of any police officer who is the subject of an allegation of unreasonable force against whom a charge has not been filed.

The information underlying these status reports is confidential.[24] Yet witnesses at the hearing testified as to the need for greater measures. In

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17 Paul L. Hoffman, *The Feds, Lies and Videotape: The Need for an Effective Federal Role in Controlling Police Abuse in Urban America*, vol. 66, University of Southern California Law Review 1453 (1993).

18 CPD, Gen. Order No. 82–14, Addendum No. 2 (effective Oct. 15, 1982).

19 D.C. Code Ann. § 4-903(e) (1988).

20 Council of the City of Virginia Beach, A Resolution Authorizing the City Manager to Implement the Recommendations of the City Manager's Special Task Force (1991)

21 City of Virginia Beach Investigation Review Panel Policy and Procedures (Aug. 8, 1991), p. 10.

22 *See* International Association for Civilian Oversight of Law Enforcement (IACOLE), *USA Portion of International Compendium of Civilian Oversight Agencies* (1989).

23 Public Act 87–1239 (Sept. 3, 1992) (to be codified at Ill. Rev. Stat. ch. 24, § 10-1-18).

24 *Id.*

calling for an independent civilian review board, a witness testified:

> This process has to be open. Police are able to abuse and get away with it because we don't know what's going on. We can't get reports. The citizens don't know what happens to their own complaints.[25]

Comparing the Secrecy of Disciplinary Proceedings in Other Professions

In comparison to the medical and legal professions, disciplinary records of law enforcement personnel generally remain confidential, although parties have been successful in obtaining records through litigation.[26] Proponents of an open police disciplinary system argue that such a system would act as a "preventative measure" that would reduce the amount of misconduct.[27] According to the Federation of State Medical Boards of the United States, access to a physician's past disciplinary record is already available in most jurisdictions, at least for formal board actions. The medical profession differs from the police profession in that it has one body, The Federation of State Medical Boards of the United States, which is responsible for notifying all other States and territories of disciplinary actions.[28] In 47 States formal board actions and/or agreements are considered matters of public record.[29] Moreover, 46 States the disciplinary history of doctors is available to the public; as well as the nature of causes of any disciplinary actions in 43 States.[30]

Although the disciplinary systems in the legal profession are not currently as open as those in the medical profession, there is a trend towards a more open system.[31] The Massachusetts, Rhode

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25 Willis Testimony, *Chicago Hearing*, vol. 2, p. 28.

26 One of the most frequent arguments in favor of restricting access to disciplinary records is that the party opposing disclosure has a significant privacy interest against disclosure. However, the court in *King v. Conde* rejected this argument, concluding that "[t]he privacy interest in this kind of professional record is not substantial, because it is not the kind of 'highly personal' information warranting constitutional safeguard." King v. Conde, 121 F.R.D. 180, 191 (E.D.N.Y. 1988). The court further stated that even when disclosure may have "'some effect on individual liberty or privacy' because of their personal nature," disclosure is permissible when it serves "important public concerns." *Id.* (quoting Whalen v. Roe, 429 U.S. 589, 597 (1977)). The police officers in *King* also argued that disclosure "would compromise internal police investigation by inhibiting the candor of police officers contributing information to those files" *Id.* at 192. Although the court in *King* found no basis for this contention, the court in *Cowles Publishing Co. v. The State Patrol* found this argument persuasive. Cowles Publishing Co. v. The State Patrol, 748 P.2d. 597, 599 (Wash. 1988) (en banc). See also *J.P. v. Commissioner*, discussed in John F. O'Brien, "Doctors' Disciplinary Process Ruled Secret," New York Law J., Mar. 19, 1993, at 2.

27 *See, e.g.*, "The Public's Right to Know," *The Los Angeles Daily Journal*, Aug. 5, 1988, p. 4. "[Disclosure] guarantees accountability on the part of public officials—including police officers—and it encourages participation on the part of citizens. Both are critical to an effective democracy."

28 The Federation of State Medical Boards tracks doctor misconduct, not malpractice actions (which are likely to be available to the public through court records). According to Kathryn Sprinkle of the Federation of State Medical Boards, disciplinary actions range from formal actions, including license suspension, license revocation, probation, limitations on practice, and fines, to informal actions such as doctor supervision and private reprimands.

29 *See* The Federation of State Medical Boards of the United States, Inc., *Exchange; Section 3: Physician Licensing Boards and Physician Discipline* (1992). Note that only allopathic doctors (MDs) were considered. Osteopathic doctors were excluded from the survey. Note also that all of the States and territories did not provide information. The courts have not been uniform in their rulings with respect to the confidentiality of disciplinary proceedings within the medical profession. For example, a recent New York Appellate Division, Fourth Department, opinion held that the State health department cannot publicly disclose its charges against a doctor until a final decision has become final. *J.P. v. Commissioner*, discussed in John F. O'Brien, "Doctors' Disciplinary Process Ruled Secret," New York Law J., Mar. 19, 1993, at 2. This decision is split with another recent First Department ruling. *Id.*

30 *See* The Federation of State Medical Boards of the United States, Inc., *Exchange; Section 3: Physician Licensing Boards and Physician Discipline* (1992). Only allopathic doctors (MDs) were considered. Whether the information can be released to citizens may depend on whether the disciplinary action is formal or informal. Note that not all of the States and territories provided information.

Island, and New Mexico high courts have recently ordered that attorney disciplinary proceedings be opened to the public after a probable cause finding of misconduct is made (i.e., after formal charges have been filed).[32] At least three other States are currently considering similar proposals. If these three States adopt the proposals, more than 30 States will have open proceedings.[33] Unlike the medical profession, the legal professional does not have an organization that is responsible for notifying other States and territories of disciplinary actions. However, the American Bar Association does operate the National Discipline Data Bank that enables States to obtain information regarding a lawyer's disciplinary history in other jurisdictions.[34]

Pretext Arrests and Analysis

Witnesses at the Commission's hearing maintained that the victims of police misconduct are often individuals without a prior criminal record or who were not the suspect of a crime.[35] Standish Willis, an attorney who has brought numerous police misconduct suits in Chicago, explained that it is often the common citizen who brings suit against police misconduct: "[O]verwhelmingly, these people are not people that are confronting police on the street and end up retaliating against the police because of some criminal activities that they were involved in that the police were trying to stop, and end up getting beat up by police."[36] Mr. Willis explained:

> I find that it's the common citizen that is most outraged by this kind of action. Because they don't expect to be confronted by [the] police. They really believe that they have rights in this society. And they really believe that police are there to serve and protect. So they are surprised and shocked when this happens to them. When a school teacher's confronted on the street and harassed and abused, that school teacher, that Black school teacher, is outraged because he or she didn't believe that could happen to them on the street. And those are the kind of people that will ring your phone and come to your office and insist that something is done. The gang bangers don't do that.[37]

Moreover, it was alleged that those subjected to police misconduct will often find themselves charged with one or more of a "trilogy" of pretext charges: battery, resisting arrest, and disorderly conduct. Flint Taylor, an attorney with over 20 years experience in bringing police misconduct cases in Chicago, testified:

> [A]fter the incident of brutality, those people are going to have an arrest record because there's a policy and practice in the city, and I've seen this over 25 years, and so does anybody who's a criminal lawyer in the criminal courts, . . . that they're always going to charge you with, what we call a trilogy, battery, resisting arrest, and disorderly conduct, if they beat you up. Because if they can take an aggressive approach and perhaps even get you to plead guilty to one of those charges, they're going to have a defense to their [the police] brutality both in civil court and administratively. So . . . without any

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31 In 1989 the American Bar Association created the Commission for Evaluation of Disciplinary Enforcement (CEDE), which was responsible for studying lawyer disciplinary systems nationwide. The ABA rejected CEDE's 1991 recommendation that the attorney disciplinary process be fully open to the public, including all proceedings and records of the lawyer disciplinary agency, the ABA has rejected the opening of attorney discipline to public scrutiny. ABA Rejects Move to Open Discipline Records, *The News Media & the Law*, Spring 1992, at 36. Nonetheless, approximately two dozen States have recently enacted or are contemplating enacting the CEDE's reform proposals. Randall Samborn, "Lawyer Discipline to Open Up," *The National Law Journal*, June 7, 1993, p. 3.

32 Randall Samborn, "Lawyer Discipline to Open Up," *The National Law Journal*, June 7, 1993, p. 3.

33 Ibid.

34 The data bank only contains information on public records of lawyer discipline. It does not provide a record of all complaints made against a lawyer.

35 *See* Taylor Testimony, *Chicago Hearing*, vol. 2, pp. 85–86 and Willis Testimony, *Chicago Hearing*, vol. 2, pp. 877–89.

36 Willis Testimony, *Chicago Hearing*, vol. 2, p. 88.

37 Ibid, pp. 88–89.

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impunity, . . . if they think they did something serious, they're going to charge you.[38]

Similar assertions for other locales have repeatedly been brought to this Commission over the years.[39] For instance, in 1978, the Tennessee Advisory Committee of the Commission advised that "several representatives of various public and private service organizations, as well as individual complainants themselves, alleged that a pattern exists of Memphis police officers charging a citizen with offenses such as "resisting arrest," "disorderly conduct," or "interfering with a police officer" to justify, often after the fact, physical abuse by the charging officer."[40] Similar assertions were heard in Philadelphia, Pennsylvania, in 1979.[41]

In its 1993 nationwide study of police misconduct, *Beyond the Rodney King Story,* the NAACP documented a similar pattern from its hearings across the country in 1991. The NAACP study stated: "Far too frequently, the citizen who has just been subjected to police abuse is then arrested and charged with any of a variety of charges. The most common charges are disorderly conduct, resisting arrest, and assaulting a police officer."[42] The report's executive summary further explained: "While there are no bright lines separating meritorious charges from those with no merit, there are some factual patterns which suggest the latter. Routine stops which escalate into charges against the citizen is one common example. Another is a citizen charged with assaulting an officer, where the citizen is injured and the officer is not."[43]

In order to investigate pretextual arrests with respect to the CPD, the Commission examined 500 complaints against department members (involving citizen complaints of excessive force, civil rights violations,[44] verbal abuse, and conduct unbecoming an officer[45]) with the respective report digest—complaint register investigations, previous disciplinary action summaries for every accused officer, and 500 command channel reviews. 66.4 percent Of the 500 complaints and investigations, involved allegations of excessive force, 15.4 percent included verbal abuse, 13.4 percent involved civil rights violations, and 4.8 percent consisted of conduct unbecoming allegations. The most common type of force used in the excessive force allegations revealed that: 26.2 percent involved striking or hitting with a hand; 17.5 percent of excessive force was directed at the complainant's head area; 16.6 percent involved the use of a weapon or other object to strike the complainant such as a gun, baton, or flashlight; 11.7 percent involved kicking the complainant; and only 7.5 percent involved complaints of handcuffs being too tight. Of the complaints, 20 percent required medical treatment of the complainant.

The majority of complainants (54.8 percent) were not arrestees. For example, on May 14, 1991, at 19th and Carpenter, a high-school-age Hispanic male and five friends were coming from school.[46]

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38 Taylor Testimony, *Chicago Hearing,* vol. 2, pp. 86–87.

39 Tennessee Advisory Committee to the U.S. Commission on Civil Rights, *Civic Crisis—Civic Challenge: Police Community Relations in Memphis,* pp. 35, 39 (1978).

40 Ibid., p. 39.

41 Anthony E. Jackson, Director, Police Project, Public Interest Law Center of Philadelphia, testimony, *Hearing Before the United States Commission on Civil Rights,* Philadelphia, PA, Feb. 6, 1979; Apr. 16–17, 1979, vol. 1, pp. 38–39.

42 NAACP News, "Beyond the Rodney King Story," executive summary, pp. 6–7 (Mar. 31, 1993).

43 Ibid.

44 Complaints of civil rights violations included search of a person or premises without a warrant.

45 Complaints involving conduct unbecoming violations included sexual misconduct, misdemeanor arrest, abuse of authority, etc.

46 CPD, Summary Report—Complaint Register Investigation No.: 184253, June 14, 1991; Complaint Against Department Member, C.R. No. 184253 [sustained].

The boys were described by their baseball coach as "good kids," and not gang members. They won the championship of the Illinois State Harrison Pony League.[47] The boys stopped for one of them to drop off his school books at his home. As they were standing in front of the classmate's house talking, three uniformed officers, a male black and two male whites of the Gang Crime Unit West, ordered them against the wall.[48] One of the white officers began a search while the other officers watched. Another youth was searched and when he dropped his hands, one of the white officers pushed him against the wall. The black officer then "asked him why he was giving his partner 'An attitude', kicked him between the legs and struck him in the right rib."[49] Nothing illegal was found on the youths and they were not arrested.

After the search, the other white officer said "What good are you, no guns, no drugs, what kind of stupid Mexican are you?"[50] The accused officers denied the allegations and corroborated each other's account. None of them filled out contact cards required after temporary questioning and searches. One officer stated "that he did not fill out any contact cards because he reasoned that if the officers have to fill out a contact card on everybody that they stop and search, they will not have time to do their work."[51] The complaint was sustained with respect to excessive force and verbal abuse allegations, as well as for failure to fill out a contact card regarding the stop and search of the victim.[52]

The remaining complaints reviewed usually involved arrests for disorderly conduct (11.4 percent), battery (6.8 percent), resisting arrest (1.8 percent), other charges (18 percent); and 7.2 percent of the complainants had been issued traffic citations. Commission examination of 1989–1991 arrest files revealed that the majority of those arrested on charges of disorderly conduct and resisting arrest are black, 65.9 percent and 56.2 percent respectively.[53] On July 21, 1991, in a complaint later sustained by OPS, a white male stated that while returning to his parked car with his girlfriend, he saw a white male officer issuing traffic citations to several cars.[54] When he asked the officer why they had received a traffic citation, the officer replied "Why the f*** do you think? You two a**holes parked there. Don't park here."[55]

The victim followed the officer as he ticketed other cars and asked, "Why is parking on the gravel parkway a violation?" The officer replied "Get the f*** out of here."[56] The officer then slammed the victim against a Blazer truck, twisted his hands behind his back, grabbed and threw the victim against the truck, and arrested him for disorderly conduct. The officer also choked him. The man received emergency medical

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47 CPD, Summary Report—Complaint Register Investigation No.: 184253, June 14, 1991.

48 Ibid.

49 Ibid.

50 Ibid.

51 Ibid.

52 Ibid.

53 CPD, 1989–1991 Arrest Files.

54 CPD, Summary Report—Complaint Register Investigation No.: 185846, Aug. 26, 1991; Complaint Against Department Member, C.R. No.185846 [sustained].

55 Ibid.

56 Ibid.

treatment for a sore neck, bruised left shoulder, and swollen wrist.[57] Others arrested for disorderly conduct have been struck in the head with a gun while handcuffed.[58]

The abuse of discretionary arrest power, regardless of whether it's associated with physical abuse, is a matter of concern. Recently, the Commission examined allegations that the Metropolitan Police Department in Washington, D.C., was abusing its authority in the use of disorderly conduct arrests. The Commission found that such abuse was occurring, with no charges having been brought in 65 percent of the disorderly conduct arrests made in the first quarter of FY 1991, and one police district having an inordinate and unjustifiable number of disorderly conduct arrests.[59]

At the time of the Commission hearing in June 1992, the minority communities in Chicago were particularly concerned that a recently passed antiloitering law would be used as an additional tool to harass minority youths. Under the law, if a group of individuals is loitering, and one of them is believed to be a gang member, a police officer can order them to disperse and may arrest them if they refuse to do so.[60] Attorney Standish Willis, who works with the African American Defense Committee which opposed the ordinance, testified:

> The ordinance appears . . . clearly unconstitutional. To give a police officer the ability to reasonably believe that somebody's in a gang, raises questions about what would they look at, what would they use to determine gang affiliation. We suspect in the African American community that they will make decisions based on the locality. They will probably make decisions based on the kind of haircut this young person, or older person for that matter, is wearing. The kind of jacket the person is wearing. And clearly the U.S. Constitution allows people to stand around. And that's a first amendment right.[61]

Dennis Sakurai, program coordinator with the Southeast Asian Center, expressed similar concern, stating that "it will impact very hard on Asian communities where there is a lack of understanding in language alone."[62] A suit by the American Civil Liberties Union and the Cook County public defender contested the constitutionality of the ordinance, which was upheld by a Cook County Circuit Court judge in June 1993.[63] At the time of the ruling, approximately 130 individuals had been convicted under the law.[64]

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57 Ibid.

58 CPD, Summary Report—Complaint Register Investigation No.: 186108, Aug. 29, 1991; Complaint Against Department Member, C.R. No. 186108 [sustained].

59 CCR, *Racial and Ethnic Tensions*, pp. 22–23, 144.

60 Chicago, Code § 8-4-015. The Municipal Code of Chicago, as amended, provides in pertinent part:

> "(a) Whenever a police officer observes a person whom he reasonably believes to be a criminal street gang member loitering in any public place with one or more other persons, he shall order all such persons to disperse and remove themselves from the area. Any person who does not promptly obey such an order is in violation of this section.
>
> (b) It shall be an affirmative defense to an alleged violation of this section that no person who was observed loitering was in fact a member of a criminal street gang."
>
> *Id.*

61 Willis Testimony, *Chicago Hearing*, vol. 2, p. 49.

62 Dennis Sakurai, Program Coordinator, Southeast Asian Center, testimony, *Chicago Hearing*, vol. 2, pp. 52–53.

63 Andrew Fegelman and John Kass, "City's Anti-Loitering Ordinance Passes Constitutional Challenge," *Chicago Tribune*, June 11, 1993.

64 Ibid.

Chapter 12. Services and Alternatives for Chicago Policing

Provision of Bilingual and Interpreter Services

Many of the issues already discussed, such as the need for the effective implementation of an early warning system, greater public accountability for the investigation and adjudication of police misconduct complaints, increased monitoring of the abuse of discretionary arrest power, and the need for measures to break the code of silence, are all problems common to many local law enforcement agencies today. The adequacy of service to bilingual residents is another significant area monitoring police service in the Chicago Police Department and law enforcement agencies throughout the country.[1]

The inadequacy of bilingual law enforcement services for Asian residents of Chicago was expressed at the hearing by Dennis Sakurai, program coordinator for the Southeast Asian Center:

> We have quite a large Asian population in the city of Chicago in two different locations. . . . We've had several problems in the fact that there's very little, if any, interpretive facilities available as far as the police departments are concerned. We have gone to the police department on several occasions and told them to please call us in the social service field, in those specific neighborhoods, and we would be more than willing to help them. To this date, I have never heard of any organization getting a phone call from the police department.[2]

Moreover, Mr. Sakurai asserted that "There are Asian officers in the Chicago Police Department. Not a lot, but there are some. And I've found that those Asian officers are usually not always assigned to those districts where there's a large predominance of Asians. . . ."[3]

In response to these assertions, Superintendent Rodriguez admitted that the number of Asian sworn officers is "very, very low."[4] However, he defended the department's provision of bilingual services by indicating that he helped to establish[5] the department's Foreign Language Bank. The Foreign Language Bank is designed to provide interpreter services in over 30 languages for emergency 911 telephone calls. Under this system, the department has a Spanish-speaking 911 operator on duty at all times, and volunteers from the community provide interpreter services in other languages by being rapidly contacted and connected into the call.[6]

Nevertheless, the need for bilingual services is broader than the provision of bilingual telephone dispatchers:

> Among the Asian community, one of the biggest problems they have is underreporting of incidents by Asians.

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1 *See* U.S. Commission on Civil Rights, *Civil Rights Issues Facing Asian Americans in the 1990s* (February 1992), pp. 49–53; CCR, *Racial and Ethnic Tensions*, pp. 40–42; and The Los Angeles County Sheriff's Department, *A Report by Special Counsel James G. Kolts & Staff* (July 1992), pp. 198–200 ("In order to provide effective and sensitive policing . . ., the Department is in great need of bilingual personnel. Unfortunately, its current bilingual resources are seriously outstripped by the need for bilingual services. . . . As a result, the Department has a serious inability to communicate effectively with large portions of the communities it serves.") Ibid., p. 199.

2 Sakurai Testimony, *Chicago Hearing*, vol. 2, pp. 30–31.

3 Ibid., pp. 31–32.

4 Rodriguez Testimony, *Chicago Hearing*, vol. 2, p. 215.

5 Ibid., pp. 215–18.

6 For more information on the Foreign Language Bank, *see* Matt Rodriguez and Sgt. James Devereaux, *Establishing a Foreign Language Bank*, FBI Law Enforcement Bulletin 9 (March 1987).

The reason why is because of incidents that have happened in the past. For example, there have been instances where perpetrators were caught by the police officers along with the victims, but since the victim was unable to articulate, the perpetrator actually turned it around and the victim actually got arrested, . . . and had to get legal counseling to make the story come out. Other cases where . . . people are arrested or taken into custody, the police can't Mirandize them because they don't understand English. They do take them to the station and they're held until somebody can interpret for them or something else is done.

The problem is . . . none of these police departments call our agencies. They can call our agencies at any time. In my case, I've told the police officers that they can call my number, even my home personal telephone 24 hours a day for interpretative purposes. They have never, ever called. And I know of different cases where these people have sat in jail overnight or even longer without proper due course of law.[7]

Training

Courts throughout the country have uniformly recognized that municipalities have an affirmative duty to train their police officers.[8] The Illinois Local Governmental Law Enforcement Officers Training Board (also known as the Police Training Board), is responsible for administering and certifying training programs and courses for local law enforcement agencies.[9] Since 1976 all newly appointed officers are required to meet specific minimum standards before being certified by the State of Illinois.[10] Officers are now required to:

1. Successfully complete a 400-hour basic law enforcement curriculum,
2. Successfully complete a 40-hour firearms training course,
3. Pass a comprehensive examination administered by the Police Training Board, and
4. Meet minimum physical training standards for new officers. The basic law enforcement curriculum contains instruction in the legal aspects of police work, such as arrest, use of force, and rights of the accused; crisis intervention and other human behavior issues, such as crowd behavior and child abuse; crime prevention; investigation and other procedural aspects of police work, such as communications; traffic law enforcement; firearms instruction; and first aid training.[11]

The coordinator of Citizen's Alert, Chicago's only police accountability organization, testified: "We feel that training must be more effective and they must use progressive methods of analyzing and dealing with problems on the street, so that officers can respond without the unnecessary use of force that happens so often. And also in treating citizens with more respect."[12] Superintendent Rodriguez testified:

[T]he need for proactive and preventive measures is being addressed in this Department by the initiation of its service, cultural awareness and sensitivity training. This training reinforces the recruit training program and all other professional experiences. The training will also help our officers to understand how overcoming their individual or collective biases, enhances police-community relationships and can benefit the officer individually.[13]

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7 Sakurai Testimony, *Chicago Hearing*, vol. 2, pp. 54–55.

8 Illinois Criminal Justice Information Authority, *Trends and Issues 90. Criminal and Juvenile Justice in Illinois* (1990), p. 39 (hereafter *Trends and Issues 90*). *See* City of Canton, Ohio v. Harris, 489 U.S. 378 (1989); Spell v. McDaniel, 824 F.2d 1380 (4th Cir. 1987).

9 *Trends and Issues 90*, p. 39.

10 Ibid., p. 39.

11 Ibid.

12 Powers Testimony, *Chicago Hearing*, vol. 2, p. 17.

13 Rodriguez Testimony, *Chicago Hearing*, vol. 2, p. 184.

When questioned about the adequacy of present multicultural training programs, John Dineen, president of the police union, testified that officers complain that present training programs are excessive or unnecessary.[14]

The president of the police board testified:

> By the time a police officer comes before the board, it often is too late. And while some people speak cavalierly about the need to fire more police officers, it is worth remembering that Chicago taxpayers have invested approximately $100,000 to train each police officer. While we should not hesitate to rid the force of bad cops, we must do everything we can to help good cops from going bad.[15]

Superintendent Rodriguez also commented on the need for continuing in-service training for managers.[16]

According to an independent audit, the Chicago Police Department's "current performance evaluation, management training and promotion processes are ineffective and do not contribute to the successful management of the department."[17] For example, the report found that managers and supervisors received inadequate management training.[18] It was recommended that sergeants, lieutenants and captains receive additional management training.[19]

Recruitment

According to the Illinois Criminal Justice Information Authority 1990 U.S. census, data,[20] although, white males accounted for 68 percent of

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14 John Dineen, President, Fraternal Order of Police, Chicago Lodge No. 7, testimony, *Chicago Hearing*, vol. 2, p. 178.

15 Maule Testimony, *Chicago Hearing*, vol. 2, p. 203.

16 Rodriguez Testimony, *Chicago Hearing*, vol. 2, p. 211.

17 Booz Allen & Hamilton Inc., *Final Report, Improving Police Service: Patrol Operations and Strategy, Vol. I: Patrol Operations* (Chicago, IL: August 1992), p. A–17 (report of an ongoing review of the patrol operations of the Chicago Police Department conducted in coordination with the department and the city administration).

18 Ibid.

19 Ibid.

20 Illinois Criminal Justice Information Authority, *Dynamics of Aging in the Illinois Law Enforcement Officer Corps*, March 1992, pp. 50–51. A further breakdown of minority representation reveals that blacks constituted 38 percent of Chicago's population, Hispanics constituted 19 percent of the population, and Asians made up 4 percent of the population, while Native Americans represented 2 percent of the city's residents. Although minorities were represented at the executive level, they were not well-represented at mid-management levels. Ibid. An overrepresentation of male officers in the department increases with rank. In the summer of 1991, 14 percent of the department was female, with no women at the rank of captain. There were two female commanders and three directors (equivalent to commander rank).

In July 1994, of the department's 1,081 sergeants, approximately 72 percent were white, 22 percent were black, and 6 percent were Hispanic. As a result of the most recent sergeants test conducted in January 1994, only 5 minorities among 114 officers will be promoted to sergeant, and only 62 minorities (40 blacks and 22 Latinos) will be among the total of 500 who will eventually be promoted as top scorers from the almost 1,937 patrol officers who passed the recent test, 483 of them minorities. This was the first promotion exam conducted under current Federal law which prohibits race norming, or awarding minorities extra points. John Kass and John Fountain, "Daley aides defend police sergeant's test," *Chicago Tribune*, July 26, 1994, p. 7; John Kass and John Fountain, "Daley defends fairness of police examinations," *Chicago Tribune*, July 27, 1994, p. 7.

The Chicago Police Department has operated under an affirmative action plan covering the employment of black and Hispanic police officers. Samuel Walker, *"Employment of Black and Hispanic Police Officers, 1983–1988: A Follow-up Study,"* Occasional Paper (Center for Applied Urban Research: February 1989), pp. 4–5. "[B]ased on findings of past discrimination and following consent decrees entered into with the U.S. Department of Justice, the Chicago Police Department has implemented minority promotional goals and has taken other measures over several years to remedy this past discrimination. The city is vigorously defending these actions against numerous 'reverse discrimination' challenges in Federal Court. *See, e.g.*, U.S. v. City of Chicago, 897 F.2d 243 (7th Cir. 1990)." Rodriguez Correspondence, p. 5.

all Chicago police officers in 1991, only 37 percent of Chicago residents served by the Chicago Police Department are white. Superintendent Rodriquez testified on increasing minority representation in the police force. He maintained that as of June 1992, African Americans represented 25 percent of the total department's sworn members (3,021 out of a total of 12,119); Hispanics represented 7.4 percent (900); sworn females representation was 15.9 percent (1,928).[21] As to the number of Asians within the department, Superintendent Rodriguez revealed that: "They're very, very low. As a matter of fact, we're doing what we can, in fact, to encourage the number of Asians to become police officers."[22] In fact, the Commission found that as of June 1992, Asians represented only 0.4 percent (47) of total sworn members.[23] Superintendent Rodriguez further remarked:

During the period of 1982 through 1986, the department hired 839 African American men and women and 288 Hispanic men and women. In the 5 years that followed, 1987 to 1991, the department improved by hiring 1,032 African American men and women and 362 Hispanic men and women as law enforcement officers. There's also been steady improvements in the movement of minorities through the ranks into managerial level positions. For instance, in 1982, African Americans represented only 8.6 percent of the total number of lieutenants on the department. That is 25 of the 292. This percentage grew to 13.8 percent in 1987 and the numbers there are 34 of the base of 246. It now stands at 20.1 percent and the numbers reflected here are 56 of 279.[24]

As of September 1993, whites made up 59.0 percent, blacks made up 32.1 percent, Hispanics made up 7.9 percent, and Asian Americans made up 0.7 percent of the department's sworn and civilian personnel.[25]

The Hispanic Institute for Law Enforcement (HILE), a nonprofit training and education organization, chaired by Superintendent Rodriguez, contributed to increasing minority representation.[26] Through the efforts of HILE, approximately 4,000 persons studied tutorial programs designed to assist Hispanics with the written and oral parts of the Chicago Police Department's exam.[27] Superintendent Rodriguez explained that although HILE's tutorial services have been marketed primarily in Hispanic areas, "the greater percentage of our classes have been by African Americans, and we've had Asian Americans and we've had many, many females. And we're quite proud of that."[28]

Significant underrepresentation of minorities remain despite steady improvements in minority and female representation within the Chicago Police Department. According to the Illinois Criminal Justice Information Authority, the recruitment pool in Chicago is not a problem. In 1991, 70 percent of the 37,300 applicants were racial minorities and 30 percent were women, while the vast majority of retirement eligible officers were

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21 Rodriguez Testimony, *Chicago Hearing*, vol. 2, p. 187.

22 Ibid., p. 215.

23 CPD, Report DPOL8159-4, CPD Sex and Racial Composition Report Based on Operational Strength File By Bureau Unit and Title, June 2, 1992.

24 Rodriguez Testimony, *Chicago Hearing*, vol. 2, p. 188.

25 Rosanna A. Marquez, Director of Programs, Office of the Mayor, City of Chicago, letter to Rosalind D. Gray, Acting General Counsel, U.S. Commission on Civil Rights, re Draft U.S. Commission on Civil Rights Report, *Racial and Ethnic Tensions in American Communities: Poverty, Discrimination, and Inequality—Chicago Hearing*, May 23, 1994, attachment F.

26 Melita Marie Garza, "Hispanics Still Underrepresented on Nation's Police Forces," *The Chicago Tribune*, June 28, 1992, p. 4.

27 Ibid.

28 Rodriguez Testimony, *Chicago Hearing*, vol. 2, p. 216.

white males.[29] Increased efforts to improve representation of minorities and women will likely result in a better educated force. Minority officers have an equivalent education level to white officers (12.9 years average education level), and women have more years of education (13.1 years).[30]

Community Policing

Frustrated by traditional methods of reducing crime, more than 300 U.S. cities and towns, including Boston, Houston, and San Francisco, have adopted the concept of community policing.[31] Community policing or community-oriented policing is a proactive form of law enforcement strategy and management based on the assumption that neither the police nor citizens can be the sole providers of community maintenance and order.[32] Thus, law enforcement, rather than just responding to calls for service, works with the community in identifying and solving crime problems.[33] It requires a departmentwide commitment to involve citizens as partners in the process of reducing crime and fear of crime, neighborhood decay, and in efforts to improve and enhance the quality of life in the community.[34] The concept of community policing continues to evolve. Despite the lack of a consistent definition and implementation of community policing among law enforcement agencies, common methods in which the police can encourage citizen interaction as part of a community policing program exist, such as foot or park and walk patrols, substations, community newsletters, neighborhood watch programs, and providing crime victims followup information.[35]

According to law enforcement expert, Patrick V. Murphy: "A majority of police are patrol officers. Where most crime is found their valuable time is misused in 'chasing calls' where they are not needed. The best use of their time is leveraging the eyes, ears, influence and networking of a small neighborhood community which can accomplish more than police in preventing crime. Patrol should be organized primarily by space, rather than time—sector, beat and sub-beat managers replacing watch commanders, watch sergeants and call responders."[36] Many police departments across the country are now changing to community policing.[37]

Community policing requires the complete participation of all patrol officers.[38] Patrick V. Murphy has found that: "[u]rban poverty presents especially challenging problems to officers. Large poor populations concentrated in inner cities over large areas unrelieved by any oases of middle class strength and weakened by the anonymity of urban life need police resources proportionate to their share of crime as well as creative approaches to their need for protection, partnerships with the police and political empowerment to enable them

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29 Illinois Criminal Justice Information Authority, *Dynamics of Aging in the Illinois Law Enforcement Officer Corps*, March 1992, p. 50.

30 Ibid., pp. 50–51; fig. 28, Average education levels in the Chicago Police Department in 1991.

31 Richard Lacayo, "Back to the Beat," *Time*, Apr. 1, 1991, p. 22.

32 Illinois Criminal Justice Information Authority, *Trends and Issues 90, Criminal and Juvenile Justice in Illinois* (1990), p. 41.

33 Ibid.

34 Robert C. Trojanowicz, "Community Policing is Not Police-Community Relations," *FBI Law Enforcement Bulletin*, October 1990, p. 8.

35 Ibid.

36 Patrick V. Murphy, *Organizing For Community Policing*, in Issues in Policing New Perspectives (Lexington, Ky.: Autumn House Publishing, 1992), p. 26 (hereafter *Community Policing*).

37 Ibid., p. 5.

38 *Community Policing*, p. 12.

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to obtain social and economic justice."[39] In order to bring community policing to the cities, police departments "must be organized to facilitate community partnerships at the sub-beat and beat levels."[40]

At the time of the Commission hearing, community-oriented policing did not exist within the Chicago Police Department. However, Superintendent Rodriguez testified that he was a long-time proponent of such policing and was planning to implement it with the initiation of five prototype districts within the city of Chicago.[41] Subsequent to the Commission hearing, an independent review of the patrol operations of the CPD, conducted in conjunction with the department and the city administration, recommended implementation of a "neighborhood-based policing strategy" beginning with the implementation of five prototype districts in March 1993.[42] The recommended neighborhood-based strategy for Chicago emphasizes: (1) neighborhood orientation, (2) increased geographic responsibility, (3) differentiated response to calls for service; (4) proactive problem-oriented approach, (5) leveraging community resources for crime prevention and control, and (6) crime problem analysis.[43]

The Chicago Alternative Policing Strategy (CAPS) has since been implemented in the five prototype districts. Under CAPS, according to Superintendent Rodriguez;

> The department is engaging in a new, more meaningful partnership with the citizens of Chicago. Citizens are being invited—actively encouraged in fact—to get involved in their neighborhood police operations. For the first time, residents are being given the opportunity to meet regularly with the police officers responsible for protecting their communities in a neutral, non-confrontational setting. In the five CAPS prototype districts, residents and police have been sitting down for more than one year now to jointly identify and prioritize the crime problems on their beats. As importantly, they are jointly assigning and accepting responsibility for solving many of these problems. This unprecedented level of dialogue and cooperation between police and community is now being expanded to all neighborhoods of Chicago.[44]

CAPS' success is being evaluated by independent researchers, but, according to Superintendent Rodriguez, "preliminary evidence suggests that CAPS is beginning to usher in a new era in police-community relations in Chicago."[45]

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39 Ibid., p. 5.

40 Ibid., p. 26.

41 Rodriguez Testimony, *Chicago Hearing*, vol. 2, pp. 207–08.

42 Booz Allen & Hamilton Inc., *Final Report, Improving Police Service: Patrol Operations and Strategy, Vol. II: Neighborhood Based Strategy* (Chicago, IL: August 1992), p. 82.

43 Ibid.

44 Matt L. Rodriguez, Superintendent of Police, City of Chicago, letter to Rosalind D. Gray, Acting General Counsel, U.S. Commission on Civil Rights, Re U.S. Commission on Civil Rights Report on *Racial and Ethnic Tensions in American Communities: Poverty, Inequality, and Discrimination—Chicago Hearing*, May 23, 1994, p. 7.

45 Ibid., p. 8.

Chapter 13. The Federal Government's Role

Criminal Prosecutions

In addition to the law enforcement agency's own disciplinary system, an important tool for the amelioration of police misconduct is through the prosecution of police brutality suits. Yet, only six Chicago police officers were prosecuted for police abuse of citizens by local and Federal prosecutors between 1982 and 1992.[1] Five of the six officers were acquitted, and the sixth officer was convicted of a misdemeanor.[2]

The Criminal Section of the Civil Rights Division of the United States Department of Justice is charged with bringing Federal prosecutions for criminal violations of the civil rights laws. The two principal statutes for prosecuting police misconduct are 18 U.S.C. § 241[3] and 18 U.S.C. § 242.[4] The Department of Justice has been criticized for its failure to prosecute a greater number of police misconduct cases.[5] In fiscal year 1992, the Civil Rights Division received 8,599 complaints, and investigated 3,212.[6] Allegations of police

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1 David Jackson, "Difficult Path to Justice in Cop Brutality Cases," *Chicago Tribune*, May 3, 1992.

2 Ibid.

3 18 U.S.C. § 241 states:

> If two or more persons conspire to injure, oppress, threaten, or intimidate any inhabitant of any State, Territory, or District in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; or
> If two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secure—
> They shall be fined not more than $10,000 or imprisoned not more than ten years, or both; and if death results, they shall be subject to imprisonment for any term of years or for life.

18 U.S.C. § 241 (1988).

4 18 U.S.C. § 242 states:

> Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any inhabitant of any State, Territory, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains or penalties, on account of such inhabitant being an alien, or by reason of this color, or race, than are prescribed for the punishment of citizens, shall be fined not more than $ 1,000 or imprisoned not more than one year, or both; and if bodily injury results shall be fined under this title or imprisoned not more than ten years, or both; and if death results shall be subject to imprisonment for any term of years or for life.

18 U.S.C.§ 242 (1988).

5 *See Police Brutality: Hearings Before the Subcomm. on Civil and Constitutional Rights of the House Comm. on the Judiciary*, 102nd Cong., 1st Sess. 66 (1991) (testimony of Paul Hoffman, Legal Director, ACLU Foundation of Southern California) ("Last year only 35 law enforcement officers in the entire country were brought up on criminal charges under the civil rights statutes. Even those most optimistic about the level of police brutality should find it hard to believe that only 35 cases in a year in the entire country are appropriate for presentation to a grand jury. One can tell simply by looking at these statistics that the Justice Department isn't addressing the problem of police abuse in a meaningful way").

6 Linda K. Davis, Chief, Criminal Section, Civil Rights Division, U.S. Department of Justice, Information submitted to the Office of the General Counsel, U.S. Commission on Civil Rights, Apr. 16, 1993.

misconduct constituted 85 percent of the investigations,[7] with the remaining cases involving allegations of racial violence and slavery. Of the investigations, 46 cases involving law enforcement were taken before grand juries; 27 cases were filed against law enforcement officials; and 11 trials, involving 59 law enforcement defendants, were conducted. Three convictions, and 22 guilty pleas against law enforcement officials were obtained (with a success rate of 59.5 percent.[8]

As discussed previously, OPS received approximately 2,000 excessive force complaints a year since 1974.[9] Chicago's rate of citizen complaints per 100,000 inhabitants is the highest among the six largest U.S. cities.[10] Yet, since October 1988, the Federal Government has brought only four police misconduct cases under Federal criminal civil rights laws in the Chicago area.[11] The four prosecutions brought by the U.S. Attorney's Office for the Northern District of Illinois and/or the Civil Rights Division's Criminal Section are:

(1) *U.S. v. Jenkins* (charges filed April 9, 1991) (described by the Department of Justice as: "A Maywood Police Officer was acquitted of beating a man arrested for burglary") Newspaper accounts of the trial stated that the Maywood lieutenant was accused of:

> climbing through the window of a known drug house without a search warrant, burning two men with a space heater, beating them with a claw hammer, and holding a gun to their head in a game of Russian roulette, all while interrogating them. In a second incident, . . . [he was] alleged to have beaten a drug suspect repeatedly with an aluminum baseball bat, leaving one leg disfigured, as a crowd of onlookers yelled for him to stop. Six weeks later . . . upset with a burglary suspect who wouldn't tell police his name, [he] punched and kicked him in the Maywood Police station lockup until he admitted his identity, the government charges. The victim suffered two cracked ribs and a bruised kidney.[12]

(2) *U.S. v. Kurz & Runnels* (filed November 4, 1992) ("Two Chicago police officers were charged with using their positions to rob the owners, employees, and customers of a tavern and car wash by conducting illegal searches of the premises") One officer was charged with robbing the Hispanic-owned tavern of $1,900 and carwash of $4,600 while the other officer guarded employees and customers.[13]

(3) *U.S. v. Vehrs* (filed January 20, 1993). The former head of the Chicago Heights Police Department's narcotics unit, pled guilty "to planting cocaine on a drug-dealer suspect after arresting him on a bogus traffic violation"[14] and

(4) *U.S. v. Zerante & Column* (filed January 26, 1993) ("Chicago Heights police officers pled guilty to charges arising from the false arrest of the victim on drug charges").[15]

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7 Eke and Davis, *Civil Rights Cases and Police Misconduct*, FBI Law Enforcement Bulletin, August 1991, pp. 14–15.

8 Linda K. Davis, Chief, Criminal Section, Civil Rights Division, U.S. Department of Justice, Information submitted to the Office of the General Counsel, U.S. Commission on Civil Rights, Apr. 16, 1993.

9 Office of Professional Standards, *Police & Public*, Table – "Number of Cases Received and Closed"

10 *The Big Six: Policing America's Largest Cities* (Police Foundation 1991), p. 12.

11 Linda K. Davis, Chief, Criminal Section, Civil Rights Division, U.S. Department of Justice, Information provided to the Office of the General Counsel, U.S. Commission on Civil Rights, Apr. 16, 1993.

12 Matt O'Connor, "U.S. Trial to Begin for Maywood Cop," *The Chicago Tribune*, Mar. 2, 1992, p. 3.

13 Matt O'Connor, "2 City Cops Indicted in '88 Robbery Case," *The Chicago Tribune*, Nov. 5, 1992, p. 3.

14 Matt O'Connor, "2nd Officer Admits Case Was Bogus," *The Chicago Tribune*, Mar. 10, 1993, p. 2.

15 Linda K. Davis, Chief, Criminal Section, Civil Rights Division, U.S. Department of Justice, Information submitted to the Office of the General Counsel, U.S. Commission on Civil Rights, Apr. 16, 1993.

Civil Suits For Damages Under Federal Law

Victims of police abuse may bring civil actions for damages under Federal civil rights laws, namely section 1983 of the Civil Rights Act of 1871,[16] although it is of limited utility. The Commission has stated:

> Section 1983 suits against individual police officers suffer from the same intrinsic weaknesses as do State tort cases . . . the expense of maintaining a suit, problems of proof and credibility of witnesses, and limited personal assets of the defendant police officer. For all of these reasons it is the exception rather than the rule for a victim of police misconduct to prevail against an individual police officer under section 1983 lacking clearly outrageous instances of police illegality.[17]

The Commission further found that:"Civil suits against individual police officers may help to deter police misconduct. The effectiveness of this remedy in deterring police misconduct within a department could be strengthened by subjecting municipalities to liability for the unlawful actions of police officers."[18]

Civil rights advocates cite the need for Federal legislation to overcome judicially imposed barriers to imposing liability on a municipality whose police department deprives persons of their constitutional rights.[19] The problem is further exacerbated by judicially imposed immunity doctrines which bar recovery against individual officers.[20] At the Chicago hearing, witnesses testified to the problems of section 1983 and the need for legislation to remove judicially imposed barriers that prevent holding governments liable for the unconstitutional actions of its police officers. Flint Taylor testified:

> In Section 1983 litigation, unlike your general law of Respondeat Superior where the principal is responsible for the acts of its agents, it is only the case in [section] 1983 law, if there is a practice, policy, or custom of the police department or of the city. And again, that has become very technical. It has become a very large battleground of litigation and the Supreme Court has moved to limit and put high standards on that. In the last 10 years the standards have changed . . . So the combination of immunities of the individual police officer and the requirement of a policy against the municipality creates, even civilly, which is what most victims of brutality have as their only recourse, makes it very, very difficult to persevere, planning to get any redress. Fact of the matter is litigation, unfortunately, in this society, seems to be one of the major ways to not only redress individual wrongs, but to bring pressure on

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16 Section 1983 states:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.
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> 42 U.S.C. § 1983 (1988).

17 U.S. Commission on Civil Rights, *Who is Guarding the Guardians?* (October 1981), p. 130.

18 Ibid., p. 131.

19 American Civil Liberties Union, *On The Line, Police Brutality and its Remedies* (April 1991), p. 13.

20 Ibid.

organizations such as the Police department to change their policies.[21]

As a result of these and other barriers,[22] there is often no avenue of relief for victims of police abuse. The need remains to establish a more effective means to redress violations of civil rights and a more effective tool in deterring police misconduct.

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21 Taylor Testimony, *Chicago Hearing*, vol. 2, pp. 40–41.

The Supreme Court has held "that a local government may not be sued under § 1983 for an injury inflicted solely by its employees or agents. Instead, it is when execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury that the government as an entity is responsible under § 1983." Monell v. New York City Dept. of Social Services, 436 U.S. 658, 694 (1978). In order for § 1983 liability to attach to a municipality, a plaintiff must show that a particular program is so inadequate as to rise to a level of "deliberate indifference to the rights of persons with whom the police come in contact." City of Canton v. Harris, 489 U.S. 378, 388 (1989) (alleged failure to train police officers). Thus, the appropriate inquiry is whether a municipality's program is so inadequate that it is obvious that the inadequacy will be likely to result in the violation of constitutional rights. *Id.* A Federal court may not apply "heightened pleading standard," more stringent than the usual pleading requirements of rule 8(a) of the Federal Rules of Civil Procedure, in civil rights cases alleging municipal liability under § 1983. Leatherman v. Tarrant County Narcotics Unit, 113 S.Ct. 1160 (1993).

22 *See* James G. Sotos, "City Not Liable to Plaintiff in Police Brutality Case," *Chicago Daily Law Bulletin*, Mar. 18, 1993, p. 6.

Findings and Recommendations

The Commission's hearing in Chicago addressed three major sources of racial and ethnic tensions in that city: unequal economic opportunity; unequal access to public services; and poor police-community relations. This report has summarized the hearing record, and periodically incorporated additional research on each of these major issues. The Commission has concluded based on the hearing testimony and additional staff research that stark differences exist among racial and ethnic groups in economic opportunity and access to public services. Also racial and ethnic groups often encounter poor police-community relations in the city of Chicago. These factors become major contributors to poor intergroup relations in that city. The report has also enabled the Commission to develop the following findings and recommendations.

Part I. Issues in Economic Development

Access to Credit and Minority Business Development

Finding:[1] The Federal regulatory agencies have not adequately enforced fair lending laws. Examiners have not been well-trained and have not always followed established procedures. Furthermore, until recently, the established examination procedures were not suited to finding instances of discrimination, which often take the form of similarly qualified individuals receiving different treatment. However, the Federal regulatory agencies have shown a renewed interest in fair lending enforcement and taken some positive steps in recent months.

Recommendation: Agencies should continue their efforts to strengthen their fair lending enforcement. Fair lending examinations should be done by separate staff who specialize in the fair lending area. Each regulatory agency should reexamine its examination procedures to determine how they should be altered in light of recent insights into the various forms of lending discrimination. Agencies should share information and techniques with each other.

Finding:[2] The Federal Reserve Board and the other financial regulatory agencies have delayed exploring the use of testing as a fair lending enforcement tool. In the past year, the Office of the Comptroller of the Currency has taken initial steps to implement a testing program. However, the program has not reached a completed phase.

Recommendation: The Federal Reserve Board and other financial regulatory agencies should commence pilot testing programs in conjunction with the Department of Housing and Urban Development and the Office of the Comptroller of the Currency.

Finding: The law prohibiting making false statements on loan applications (18 U.S.C. § 1014) inhibits efforts to enforce fair lending laws through the use of testers.

Recommendation: Congress should enact an exception to 18 U.S.C. §1014 permitting testing for the purpose of finding evidence of discrimination.

Finding:[3] The Community Reinvestment Act (CRA) evaluation process as it currently exists yields inconsistent results. There is no relevant relationship between a lender's performance and its CRA rating. Some banks have been penalized for community lending outside their designated CRA lending areas. In the past, the process has

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1 Also supported by testimony at the May hearing.

2 Also supported by testimony at the May hearing.

3 Also supported by testimony at the May hearing.

required banks to produce extensive documentation. Lenders have been given little guidance about what types of activities are likely to be viewed favorably by examiners. The Federal regulatory agencies have recently proposed changes to the CRA regulations, which will assist in strengthening the enforcement of the CRA. In response to the agencies' requests for comments, the Commission staff suggested changes that would strengthen the proposed regulations. The proposed CRA regulations have not yet been finalized, however.

Recommendation: The Federal regulatory agencies should hasten to adopt revisions to the CRA regulations to enhance the enforcement of the CRA.

Finding: Agencies' current CRA enforcement does not adequately emphasize the small business lending performance of banks.

Recommendation: In order to address this banking problem, Federal financial regulators should ensure that their CRA examinations check business lending as well as mortgage lending practices.

Barriers to Minority Business Development

Finding: Minority-owned small businesses face significant barriers to accessing credit and technical assistance necessary to ensure their success. Existing Federal programs designed to assist minority businesses in these areas are not adequate.

Recommendation: The Federal Government should take additional steps to enhance minority-owned businesses' access to credit and technical assistance.

Finding: The General Services Administration (GSA), a major Federal contractor, has a sporadic record promoting minority businesses through affirmative action in contracting. The Federal Metcalfe Building was an example of a GSA project that successfully incorporated minority contractors. However, GSA has rarely emphasized minority contracting since this project.

Recommendation: GSA should take steps to ensure that all of its projects place significant emphasis on providing business opportunities to minority contractors.

Part II. Minority Access to Housing

Finding: Chicago has had a long history of residential segregation that began in the 1920s and continues today for the city's black and Hispanic residents. Public housing has greatly contributed to the segregation of African Americans from white communities in the city. The 1976 Supreme Court decision in *Hills v. Gautreaux* represents the culmination of 10 years of litigation to end the unconstitutional segregation of public housing in Chicago. Specifically, the two *Gautreaux* remedies rely upon rental subsidies and scattered-site public housing to overcome segregation. The "section 8" rental subsidy program provides subsidies to eligible low-income families throughout the Chicago metropolitan area for housing in private homes and apartments, whose owners voluntarily participate in the program. The second program attempted to build smaller public housing projects in neighborhoods throughout Chicago to achieve scattered-site public housing. Although the section 8 program has been effectively implemented, establishing the scattered site program has not been successful.

Witnesses testified about the problems associated with implementing the scattered-site housing remedy. Furthermore, successful results of the housing subsidy program demonstrated that African Americans forced to live in segregated public housing were also being excluded from the economic opportunities, of suitable schools and jobs, the very tools that would enable them to escape poverty and public housing. Although the Chicago Housing Authority (CHA) has several experimental programs designed to link public housing with economic opportunity, or to avoid concentrations of low-income families, the authority has yet to overcome the stark segregation of residents of public housing from other communities.

Recommendation: The U.S. Department of Housing and Urban Development (HUD) and the Chicago Housing Authority should undertake vigorous, coordinated efforts toward ending segregated public housing, and overcoming longstanding racial or ethnic isolation in the city of Chicago.

Finding: Despite their vast needs for such services, Latinos have low participation rates in public housing. CHA's lack of a visible Hispanic work force promotes Latinos' perceptions that public

housing is reserved for blacks, and excludes Hispanics. Furthermore, the waiting list for public housing is long (sometimes requiring a 10-year wait) and Latinos have been historically underrepresented on it. Thus, CHA's reliance on the waiting list serves to continue omitting Latinos.

Recommendations: CHA must overcome existing barriers that exclude Latinos from participating in public housing. In particular, the agency must conduct outreach in Hispanic communities; create a visible Hispanic work force to overcome any language or cultural barriers; and reduce its waiting list, so that all eligible low-income families receive public housing.

In addition to the negative effects of living in segregated public housing, minorities have suffered from discrimination in private housing in Chicago. A recent increase in the number of charges of housing discrimination appears to be accompanied by an inability of the Department of Housing and Urban Development to effectively investigate housing discrimination complaints and vigorously enforce fair housing laws. The U.S. Commission on Civil Rights has examined the enforcement of fair housing laws in other States and has provided various findings and recommendations.

The Quality and Accessibility of Health Care in Chicago for Minority Groups

Finding: The health status of individuals of disadvantaged backgrounds, including racial and ethnic minorities, is significantly lower than the health status of the general U.S. population. Chicago's poor and minority residents are actually lacking essential, basic health care. Many of the concerns regarding the quality and accessibility of health care raised by witnesses at the Chicago hearing are shared by numerous Americans, and have become a part of the larger national debate on the need for general health care reform. One serious problem is a general shortage of public health care providers to address the health concerns of needy Chicago-area residents. Language and cultural barriers also prevent many minority residents, particularly the city's large Spanish-speaking population, from obtaining appropriate health services.

The Chicago Department of Health and the Cook County Hospital operate health care systems that serve a predominantly minority population, and provide care to low-income persons regardless of their ability to pay. Despite their services and those of other health care systems, the Chicago area has a shortage of health care providers that disproportionately affects those who can least afford private care, including the city's poor and minority communities.

Patients experience long delays in obtaining appointments, with reports of 2 to 9 months delays. A lack of continuity in clinic and hospital care, inappropriate patient transferrals to Cook County Hospital based on ability to pay for services, and the hospital closings have greatly contributed to service gaps. The financial difficulties of Chicago area hospitals that led to these closings are attributed in part to inadequate Medicaid payments, cuts in government funding, and the need for a national health care system.

Recommendations: The Federal Government must address the acute shortage of basic health care in Chicago and other urban areas, and assist those public health care providers in serving predominantly poor and minority communities. The Illinois Department of Public Aid must increase its efforts to encourage applications for health insurance in every public health care facility through on-site public aid offices and streamlined enrollment.

Finding: In addition to the general shortage of health care in the Chicago metropolitan area, the Hispanic community, as the city's largest language minority group, faces additional hurdles in obtaining appropriate health services. At the time of the hearing, seven of the Chicago Department of Health clinics had a patient population that was more than 8 percent Hispanic. In those seven clinics, between 29 and 88 percent of the patients were Hispanic. In all the clinics, the levels of Hispanic and bilingual staffing does not adequately address the needs of their Hispanic and Spanish-speaking patient population.

The city's Lower West Side Clinic has the largest percentage of Hispanic patients (88 percent). Despite having the largest number of Hispanic and Spanish-speaking staff of all the city's clinics, with 24 Hispanic staff (33 percent) and 26 bilingual staff (36 percent), additional staff are needed. Similarly, the South Lawndale Clinics' patients are 79 percent Hispanic, yet only 12 (27 percent) of its staff are Hispanic and 11 (24 percent) are

Spanish. Although the Davis Square Clinic has a large Hispanic patient population (84 percent), only one staff member (a medical service provider) was Hispanic with bilingual capability. Only two of the seven clinics with the largest Hispanic patient population, have a Spanish-speaking licensed practical nurse (Lower West Side and Lakeview Clinics). Other bilingual health care professionals include: between 0-2 clinic nurses; 0-3 physicians; and 0-1 dentists that are Spanish-speaking.

A similar need for bilingual staff exists at Cook County Hospital. Hospital statistics reveal that during July 1988 through June 1989, 5,601 of the nearly 32,000 inpatient admissions (or 18 percent) were Hispanic. Hospital officials were unable to provide any statistics on the number of bilingual staff employed at the hospital or the languages spoken at the facility. Only 5.1 percent of Cook County Hospital's employees were Hispanic. Although the racial/ethnic mix for outpatients is thought to mirror closely that of inpatients (suggesting that 18 percent of outpatients are also Hispanic) only 0.1 percent of the employees in ambulatory outpatient services are Hispanic. During fiscal year 1991, Cook County Hospital had only three staff interpreters. Patients requested interpreter services at Cook County Hospital 9,625 times during fiscal year 1991, of which 7,256 of the contacts were for a Spanish interpreter, 2,150 for a Polish interpreter, and 291 for other interpreters. During 1991 hospital staff canceled 221 calls for an interpreter because they found someone else in the area to interpret, or a relative of the patient spoke the language. However, 116 calls for interpreters were unattended because other calls requested an interpreter at the same time.

Due to a lack of health care interpreters, the interpretive services available are of inconsistent quality. Interpreters are seldom schooled in the translation of medical terminology. The patient's children, or the nearest available clerk, secretary, or janitor are frequently relied upon to convey critical medical information. Bilingual staff are typically expected to assume the interpretation duties in addition to their other primary job responsibilities, without additional compensation.

Recommendations: The Cook County Hospital and the city of Chicago's Department of Health must ensure that health services are provided in the language and cultural context appropriate to their patients. Immediate efforts must be undertaken to hire qualified Hispanic and Spanish-speaking professional staff and interpreters for their facilities to better serve this city's largest language minority group. The Cook County Hospital and the city of Chicago's Department of Health must develop and implement a program to ensure the delivery of quality interpreter and translation services and compensation to staff for additional interpretive duties.

The Office of Minority Health of the U.S. Department of Health and Human Services' Office of the Assistant Secretary for Health must increase its efforts to assist Chicago area public health care providers in obtaining the support of bilingual health professionals and other individuals, through the provision of financial and technical assistance.

Access to Education

Finding: After being found in violation of title VI of the Civil Rights Act of 1964, the Chicago Board of Education and the Department of Justice entered a consent decree in federal district court in 1980 to remedy the effects of past segregation on black and Hispanic students. The consent decree also contained a bilingual education component to improve services to limited-English-proficient students.

The testimony of witnesses at the Chicago hearing, and Commission analysis of subpoenaed documents, revealed that the Chicago public school system (despite some improvement) is still failing its predominantly minority student population, particularly those with limited-English proficiency, by leaving them ill-prepared for obtaining higher education or productive employment.

The decentralization of Chicago public schools has brought about some preliminary positive results in terms of reallocating resources to children of greatest need. However, implementing and monitoring policies and procedures on a local level can be problematic, due to the transfer of substantial decisionmaking powers from a central administration to the local levels. This becomes more apparent in the implementation of Federal and State mandates to provide equal educational opportunities for limited-English-proficient students.

Analysis of subpoenaed documents and hearing testimony demonstrate serious deficiencies of lack of compliance with Federal and State mandates, which is effectively denying these students an equal opportunity to benefit from the educational programs offered by their schools. At the time of the Chicago hearing, of the more than 400,000 students in Chicago public schools, 49,160 were limited-English-proficient (LEP) students. The six largest LEP student groups were: 39,948 Spanish, 1,723 Polish, 693 Arabic, 617 Cantonese/Mandarin, 505 Vietnamese, and 337 Korean.

Commission analysis of subpoenaed documents revealed that of the 300 schools implementing bilingual education programs in the Chicago public schools, the department of language and cultural Education conducted only 81 program compliance reviews in 1990, 119 in 1991, and 100 as of the time of the hearing. The department had only five staff members to conduct these compliance reviews. Examples of the most common deficiencies found in the implementation of the transitional bilingual education programs included: high numbers of LEP students, (particularly Spanish LEP students) not receiving services, inferior facilities for transitional bilingual education programs (conducting bilingual pull-out classes on a second floor landing), extraordinarily high student-teacher ratios (as high as 92:1 in a Russian program), 147 bilingual or ESL teachers lacking required certification, lack of bilingual instructional materials, lack of ongoing gifted/talented programs for LEP students, a considerable number of LEP students improperly withdrawing from the transitional bilingual education program, and written notices not provided in the parents home language.

The Office for Civil Rights enforcement efforts to ensure equal educational opportunities for limited-English-proficient students in the Chicago public schools were most visible in the 1970s. At the time of the Commission hearing, the most recent OCR compliance review of the Chicago public schools was conducted in the 1980s, and focused on the timeliness of evaluation and placement of disabled students.

Recommendations: It is imperative that the U.S. Department of Justice examine the above-cited deficiencies in the provision of educational programs to Chicago Public School students, particularly those with limited-English proficiency, and ensure compliance with the consent decree.

The Office for Civil Rights must conduct a compliance review of the Chicago public schools to determine compliance with title VI of the Civil Rights Act of 1964, in order to guarantee that LEP students are afforded meaningful access to the Chicago public schools' programs.

The Illinois State Board of Education's bilingual education section and the department of language and cultural education must also increase its monitoring of the State Mandated Transitional Bilingual Education Program in the Chicago public schools for compliance purposes. An intensive, coordinated, and comprehensive recruitment plan also must be developed and implemented to address the growing need for certified bilingual teachers, particularly Spanish teachers.

Employment and Training Programs in Chicago

Job training can increase the employment opportunities for workers who are not prepared for available jobs. Yet many concerns arose regarding the Federal program for job training needs, the Job Training Partnership Act (JTPA). These concerns ranged from the nature and effects of the public-private partnership design of the program, the types and length of training and resulting jobs, and the lack of supportive services for participants, to the inaccessibility for those with limited-English proficiency, the administrative difficulties of too few funds, overly restrictive eligibility criteria, and burdensome paperwork.

A year after the hearing, the Job Training Reform Amendments took effect. The amendments intended to improve the targeting of JTPA services to those facing serious barriers to employment, to enhance the quality of both services provided and program outcomes, to strengthen the linkage between the services provided and local labor market needs, to foster a comprehensive and coherent system of human resource services, and to promote fiscal and program accountability. Along with the Department of Labor's accompanying regulations, these amendments addressed many of the concerns about JTPA.

For example, JTPA established a public-private partnership by creating a Private Industry Council (PIC) whose members are representatives of businesses, educational agencies, economic development agencies, etc. This council is a

mechanism for linking training and job opportunities. In its new regulations, the Department of Labor reemphasized the key role of the PIC in identifying high demand occupations, and in establishing training programs for these jobs. The 1992 amendments further specified the composition of the PIC to aid in reaching this goal.

- The Mayor of the city of Chicago must monitor the activities of the PIC to ensure that JTPA training is linked to job opportunities. Within the constraints of the law, the mayor should appoint members of the PIC who will achieve this end.

The city of Chicago served a population that was 20 to 24 percent Hispanic under JTPA, as it existed at the time of the hearing. However, the new statute's language further encouraged service to individuals with limited-English proficiency along with the generally more intensive and comprehensive services that are provided to all participants.

- The city of Chicago should monitor its JTPA services to ensure that Hispanics are trained in proportion to their representation in the JTPA-eligible population and that the services Hispanics do receive are of equal length and quality to those received by other groups with similar needs.

The reformed JTPA continued to require that supportive services be provided largely through coordination with other Federal and local programs.

- The city of Chicago continued to establish and enhance its linkages with other programs, including those operated by Federal, State, or local governments, community-based organizations, business and labor organizations or volunteer groups, to provide supportive services to JTPA participants. When possible, it should provide financial assistance through needs-based payments.

The Department of Labor regulations address concerns that JTPA was subsidizing on-the-job training (OJT) for low-skill jobs that had high turnover and were not imparting new skills to participants. The Department explained that employers should be ineligible for additional OJT contracts, if they demonstrate a pattern of employing JTPA participants for less than 6 months, or provide lower wages and fewer benefits for JTPA participants than for other similarly situated employees.

- The Governor of the State of Illinois must set standards for determining when an employer is ineligible for additional OJT contracts because of a failure to provide long-term employment or wages and benefits equivalent to similarly situated employees who are not JTPA participants.
- The city of Chicago must monitor OJT programs to ensure that JTPA participants are employed for longer than 6 months and receive wages and benefits equivalent to those of other similarly employed employees.

The Provision of Accessible Services Through a Diverse Government Work Force

Finding: Testimony and Commission analysis of subpoenaed documents demonstrate that Hispanics are underrepresented in government employment. Although concrete steps have been undertaken to increase the number of bilingual persons and Hispanics in the State government work force through the development and implementation of a comprehensive employment plan, such initiatives have not been developed to address the persistent underrepresentation of Hispanics in city employment.

Witnesses at the Commission hearing estimated the Illinois Hispanic population to be between 8 to 10 percent, and their representation in the State government's work force at less than half of that range. At the time of the hearing, only 1,566 (less than 2 percent) of the State government's work force (of between 80,000 and 100,000 people) were Hispanic. The underrepresentation of Hispanics among State government employees appears at all levels of government. Only 106 Hispanics were employed by the constitutional officers; only two cabinet level appointees were Hispanic, and only 39 Hispanics had been appointed to boards, commissions, and other policy-making bodies. Between January 1991 and May 1994, the number of non-Hispanic personnel under the personnel code declined by 3.9 percent while the number of Hispanic employees increased by 11 percent. Increased Hispanic representation has been achieved through the State of Illinois Hispanic Employment Plan, a multifaceted approach to enhance the employment opportunities of Hispanics in State government, as

well as access to government services. In addition to a lack of representation of Hispanic and bilingual employees in State Government, witnesses testified about mistreatment of Hispanic employees and limited-English-speaking persons seeking State government services.

Recommendation: The State of Illinois Department of Central Management Services should continue all initiatives to increase the number of Hispanics and bilingual persons employed in all levels of State government at supervisory, technical, professional, and managerial levels. This should also include regular needs assessments of bilingual personnel, and periodic evaluation of cultural sensitivity training for State employees, including management.

Finding: According to the U.S. census of Chicago, between 1980 and 1990, the Hispanic population in Chicago increased from 14.1 percent to 19.6 percent. However, Hispanics remain significantly underrepresented in the city work force, and there is slow progress in increasing Hispanic representation. In January 1989 Hispanics constituted 6.6 percent of the city work force (2,751 of the total 41,381 employed), and 8.8 percent (66 out of 754) of "Shakman Exempt" positions (i.e., management level positions). In May 1992, Hispanic city employees represented 8.2 percent (3,349 out 40,875 employees) and 12.2 percent (110 out of 900) of Shakman Exempt positions. By May 1994, 8.9 percent of city employees were Hispanic (3,501 out of 39,534), as well as 13.1 percent of Shakman Exempt positions.

In 1991, 13.2 percent of the 3,395 people the city hired were Hispanic. Of the total applicants in 1991, only 12.3 percent (11,799) were Hispanic and 9 percent (4,391) of eligible candidates were Hispanic. By May 1994, only 11.3 percent of total applicants were Hispanic (39,192 out of 343,507). Unlike the State government, the city of Chicago has not developed a comprehensive plan to increase Hispanics and bilingual persons in city government.

Recommendation: The city of Chicago Department of Personnel must develop and implement a comprehensive and targeted written recruitment plan for Hispanics and persons with bilingual capabilities, and include the participation of Hispanic and bilingual personnel in all phases of recruitment. The department must conduct an annual assessment to determine the need for bilingual personnel in all city agencies with public contact positions. Based on this assessment, bilingual abilities should be included as a ranking or selective placement factor for those public contact positions serving limited-English-speaking populations.

Part III. Police-Community Relations

Finding: Citizen complaints of police misconduct most often involve only the complainant's word against the accused officer's. The Chicago Police Department's Office of Professional Standards (OPS) generally decides to not sustain such cases, a process commonly referred to as the "one-on-one rule" The "lack of independent witnesses" has been one of the most frequently cited reasons for not sustaining a complaint. In 1991 the majority of excessive force complaints were not sustained by OPS. At the time of the Commission hearing, only 11 percent of excessive force complaints were sustained by OPS. Allegations of misconduct are routinely denied by an accused officer and his or her partner, regardless of the officer's credibility in light of an extensive complaint or disciplinary history. The practice of dismissing such complaints reinforces a common fear among citizens that their word against that of an officer's is virtually meaningless, and provides fertile ground for the continued existence of a "code of silence" within the department. It also does not examine many potentially meritorious cases and creates an almost insurmountable hurdle of proof for the average citizen, and ultimately fails to address potential problem officers.

There is inconsistent application of the proper standard of proof, as well as other inconsistencies in complaint investigations which leads to "not sustaining" the majority of complaints. OPS runs background checks on victims and witnesses, and those checks can influence its decision. However, OPS does not apply the same standard to the accused or witnessing officers. A summary of an officer's previous disciplinary actions or complaint history is not used for investigative purposes to identify patterns of misconduct, to weigh the officer's credibility, or to determine whether to sustain a complaint. Rather, it is used only after a complaint is decided when proscribing the penalty. Precluding investigators' access to an officer's complaint or disciplinary history during

an investigation severely hampers OPS' ability to identify patterns of misconduct, and to provide an informed decision.

Recommendation: OPS should prepare guidelines and initiate training regarding the proper application of the preponderance of evidence standard of proof and the appropriate use of the "not sustained" finding in police misconduct cases. Summaries of an officer's previous disciplinary actions, which includes any civil suits, or unfounded, exonerated, and not sustained complaints suits, should be used for investigative purposes (to identify patterns of misconduct) or for evaluating the officer's credibility. In addition, these summaries should be as a factor in determining whether to sustain a complaint. Such information should be available for purposes of evaluation, assignment, and training.

Finding: Officers who are repeatedly named in citizen complaints of police misconduct, (commonly referred to as "repeaters") have been and continue to be a significant problem within the Chicago Police Department. Some officers have received as many as 60 to 90 complaints of police brutality over a 10-15 year period. The seriousness of the alleged misconduct ranged from persistent verbal abuse to serious physical abuse. Police data revealed that from January 1988 to September 1991, 604 officers had received five or more excessive force complaints. During that time period, a Chicago Police Department officer accumulated 25 excessive force complaints, none of which were sustained by OPS. Other officers amassed similarly high numbers of complaints over this time period. None of these complaints were sustained by OPS.

The department's early warning system, consisting of the Behavioral Alert System and Personnel Concerns Program, has been ineffective in identifying "repeaters" and providing immediate and intensive intervention to curb problematic behavior. Unlike other early warning systems being developed by large urban law enforcement agencies, the Chicago Police Department's system is not an integrated computerized database that automatically identifies those officers who exhibit certain patterns of behavior. The system relies too heavily on affirmative reporting by other officers, particularly in light of the "code of silence" Additionally, behavioral alert indicators are not defined in precise, quantitative terms. Insufficient guidance is provided on how these factors should be applied, and the threshold that must be met before a member's behavior warrants serious attention and intervention. However, with 604 officers having five or more excessive force complaints over a 2 year period, the system has failed to recognize those individuals with potential problems and has not operated as an "early warning" for management. The cost and liability of inadequate identification and intervention of officers committing police misconduct within the department is significant. In 1991, the city of Chicago paid $3,075,045 in damages and $232,724 in fees and costs of closed police claims. The city paid even higher costs in previous years for lawsuits charging officer misconduct.

Recommendation: The Chicago Police Department should implement a centralized, integrated computer data base to identify all department members, and police districts/areas, that exhibit certain patterns of problematic behavior. Behavior alert indicators should include civil litigation. Those members identified by the system should receive immediate and intensive intervention, psychological testing, counseling, supervision, training, and discipline, if appropriate. The department must review and evaluate the efficacy of the system on a continual basis.

Finding: A major impediment in addressing the problem of repeaters within the Chicago Police Department is the purging of officers' disciplinary records, pursuant to a labor agreement with the Fraternal Order of Police. As a result, it is virtually impossible to track the true number and nature of complaints received over an officer's entire career. Moreover, citizens are not allowed public access to complaint files, findings, and recommendations in police misconduct cases. In contrast, other independent civilian review agencies make all complaint proceedings, or findings and recommendations available to the public.

Recommendation: The Chicago Police Department must maintain up-to-date, readily accessible records on the frequency and nature of every officer's *entire* career experience, including the use of excessive and/or deadly force. In recognition of the need to maintain the public's trust in its citizen complaint system, OPS findings and recommendations (including the identity of officers)

must be accessible to the public. The official misconduct of a public servant, including an officer's use of excessive force, deadly force, verbal abuse, and civil rights violations should be made a matter of public record in Chicago.

Finding: Witnesses at the Commission hearing testified that victims of police misconduct are often charged with one of a "trilogy" of pretext offenses of disorderly conduct, battery, and resisting arrest, to justify an officer's use of force. Approximately 20 percent of the 500 citizen complaints and investigations reviewed by the Commission involved these charges.
Recommendation: The Chicago Police Department should increase its monitoring of disorderly conduct, resisting arrest, and battery arrests, charges among officers and police districts. Citizen complaints of excessive force in connection with such arrests should be closely examined, and officers should receive appropriate training and discipline where abuse of such discretionary arrests powers appear likely.

Finding: Despite steady improvements in minority and female representation within Chicago's police force, there remains a significant underrepresentation of minorities and women. At the time of the Commission hearing, African Americans made up only 25 percent of the department's total sworn members; Hispanics represented 7.43 percent; Asians were 0.4 percent; and sworn female representation was 15.9 percent. In addition to the need for greater diversity on the force, the quality of service to bilingual residents requires further improvement. The Chicago Police Department operates a foreign language bank to provide interpreter services in over 30 languages for emergency 911 telephone calls. Witnesses at the Commission hearing testified about the remaining need for bilingual officers, (particularly in the Asian community) for more effective police services. The Chicago Police Department can also enhance its interaction with the community by implementing community or "problem-oriented" policing. At the time of the Commission hearing, community policing had not been established within the department.
Recommendation: The Chicago Police Department should immediately undertake further efforts to increase representation of minorities and women on the force, as well as the number of bilingual personnel. In addition, the department should fully implement community policing to enhance its interaction with and service to the residents of Chicago.

Finding: The prosecution of police brutality under Federal criminal civil rights statutes is an important tool for the amelioration of police misconduct. The two principle statutes for prosecuting police misconduct are 18 U.S.C. §§241 and 242. Since October 1988 the Federal Government has brought only four police misconduct cases under Federal criminal civil rights laws in the Chicago area. Victims of police abuse also may bring civil actions for damages under section 1983 of the Civil Rights Act of 1871, but it is a remedy of limited utility. Supreme Court decisions have severely limited the liability of municipalities for the unlawful activity of its police officers. As a result, municipalities can avoid the responsibility and accountability for their police departments and officers.
Recommendation: The United States Department of Justice must monitor the incidence of police brutality in the United States, and vigorously prosecute official misconduct under Federal criminal civil rights statutes. Congress should enact legislation to impose liability to municipalities under 42 U.S.C. § 1983 for actions of its police officers that deprive persons of any rights, privileges, and immunities secured by laws and the Constitution.

Statement by Mary Frances Berry, Chairperson and Cruz Reynoso, Vice Chairperson

This report was approved by the Commission, by a vote of four to one with one abstention, at its meeting of April 21, 1995. Commissioners Horner and Redenbaugh did not attend the meeting. All other members of the Commission were present. The transcript of the meeting, which is available to the public, shows that Commissioners who participated had every opportunity to discuss the report as fully as they wished.

Some Commissioners requested a copy of the draft report as the work was in progress and prior to final approval by the office head or the Staff Director. Based on long-established policy, Commission reports are not given to individual Commissioners before they are completed and approved for Commission review. This policy is designed to avoid individual Commissioner influence over the work product.

The Commission staff previously had recommended that a 1-day hearing be held to augment the hearing record, in order to have a solid factual basis upon which to build findings and recommendations. This request was rejected by the Commissioners. The staff then followed the Commissioners' instruction to prepare the report based on the testimony and facts already received. The result of the process is this report approved at the April 21, 1995, meeting.

Dissenting Statement of Commissioners Carl A. Anderson and Russell G. Redenbaugh

This report, including findings and recommendations, is being released in the name of the U.S. Commission on Civil Rights, after having failed to receive a favorable vote by a majority of the members of this body. To our knowledge, no revisions, substantial or otherwise, were made by Commissioners to the draft of this report, which was prepared by Commission staff. During the April 21, 1995, meeting at which this report was adopted, no discussion was had, or revisions made whatsoever, regarding any of the recommendations contained at the end of the report.

During our service on the Commission, this is the first such occasion in which a report of this size and importance has been approved in such a manner. Under these circumstances, we believe that commonly accepted notions of "truth in labeling" would suggest that this document should more properly have been released by the Commission as a staff report or not released at all.

Our objections to the Commission's issuance of this report include both procedural and substantive concerns. It has been almost 3 years since the Commission went to Chicago to investigate racial and ethnic tensions as part of a multiyear, nationwide project. The Chicago hearing was the third in a series of hearings held by this body to explore the project Racial and Ethnic Tensions in American Communities: Poverty, Inequality, and Discrimination. We have not only strongly and consistently supported this project, but we have advocated that this initiative be undertaken and worked to frame the general theme which the various hearings in this series would explore.[1]

At the time of the adoption of this initiative by the Commission we spoke to the necessity that the Commission assist policymakers at both the local and national levels to move beyond many of the old confrontations affecting civil rights issues, which had for too many years produced a type of policy gridlock. Too often, that gridlock has resulted in the failure to achieve both needed improvements to continuing, and in many cases deteriorating, situations. Most importantly, however, this gridlock has precipitated a neglect to respond adequately to the new realities which we as a nation face today, including those involving our nation's rapidly changing demographics, technological innovations, industrial restructuring, and our role in changing global economies.

These new realities confront us within a historical context defined in part by serious civil rights problems that remain unresolved. At the time the Commission determined to undertake the Racial and Ethnic Tensions project we supported it because we sincerely believed that the Commission was uniquely situated to make a significant contribution on these matters. Sadly, in our opinion, this report fails to realize that promise. Instead, much of this document chooses to focus on assumptions which may have been present among some witnesses at the Chicago hearing but which this Commission has not determined to investigate, as discussed below.

Procedural Concerns

In November 1994, current Staff Director Mary K. Mathews recommended to the Commissioners that we undertake the additional expenditure of holding a minihearing in Chicago to explore "certain specific topics,"[2] to revisit issues first examined at a Commission hearing held in June 1992, and to update the information on file. After lengthy discussion, the Commissioners agreed to hold a poll vote on December 2, 1994, on the issue of whether to conduct a minihearing.[3]

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1 Both of us served in a substantial capacity on the task force to implement this very project. For a summation of the task force's recommendations on how to proceed, *see generally*, Meeting Transcript, U.S. Commission on Civil Rights, Feb. 12, 1992.

2 Meeting Transcript, U.S. Commission on Civil Rights, Nov. 18, 1994, pp. 24–51.

3 Ibid., p. 49.

At the December 1994 Commission meeting, it was announced that the motion to conduct a minihearing in Chicago to supplement the 1992 hearing record did not pass.[4] Three Commissioners favored conducting a minihearing. Four Commissioners, each of whom is dissenting to this report, requested additional information from staff on which to base the request for a minihearing, including the draft of the hearing report. When information responsive to this request was not provided, the four voted against holding a minihearing.

When the vote was announced at the December meeting, the Vice Chairperson stated that he was "a little bit taken aback" by the negative vote and invited further explanation. In response, Commissioner Redenbaugh stated:

> I voted in the negative because I felt that the case wasn't adequately made for a new hearing. I was . . . unable to determine the condition of the existing report [and] our Commissioners' requests for drafts of the report were declined, even though the report was out for comment to not less than 17 agencies. I had no basis, or an adequate basis, for voting to confirm to reopen something that we had already done.[5]

The 211-page draft report was subsequently forwarded to the Commissioners for review 3 months later, on March 16, 1995, 1 week before the March 24, 1995, Commission meeting at which it was scheduled as a topic of discussion. At the request of several Commissioners, discussion of the report was tabled until the following Commission meeting. On April 17, 1995, 4 days before the April Commission meeting, by memorandum to the Staff Director, four of the eight Commissioners requested that this item be removed from the meeting agenda. In this memorandum, the four explained that the problems presented by this report were too extensive to commit to public record, and that Commission staff should have the opportunity to correct many of the problem areas prior to full consideration of the Commission.

Nevertheless, despite notice that exactly one-half of the Commission did not approve this report, our colleagues, by a vote of 4–1, with one abstention, chose to go forward with voting to publish the attached report in its present form.[6] The same Commissioners, who no less than 4 months prior had voted to conduct a minihearing to correct a deficient hearing record, now concluded that this report, including its findings and recommendations, was sufficient for presentation to the Congress and the President, in accordance with this body's statutory mandate.

Conducting public hearings which result in the release of statutory reports with findings and recommendations to the Congress and the President of the United States is arguably the most important function of this body. In the past, the Commission has utilized its advisory powers to influence this country's decisionmakers in a number of areas relating to civil rights concerns for all Americans over a broad spectrum.[7] While we have served on this body, we have sought to discharge our responsibility to assure a fair and accurate process of issuing findings and recommendations intended to elevate serious concerns of those under the protection of the laws of this country to the Nation's lawmakers and to bring about meaningful, beneficial change in those laws when necessary.

As mentioned above, no revisions were made by Commissioners to the draft of this report, and at the meeting at which this report was adopted, no discussion was had, or revisions made, regarding any of

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4 Meeting Transcript, U.S. Commission on Civil Rights, Dec. 16, 1994, p. 16 (comments of Mary K. Mathews, Staff Director).

5 Ibid., p. 18 (comments of Commissioner Russell G. Redenbaugh).

6 In fact, the Commission went out of sequence of its own hearing agenda, and voted on the attached report prior to items previously scheduled on the meeting agenda. Meeting Transcript, U.S. Commission on Civil Rights, Apr. 21, 1995, p. 3. In the materials that were mailed to Commissioners 1 week before the meeting, consideration of this report appeared near the end of the agenda; however, in the actual meeting, consideration of the report was near the beginning of the agenda, preceding even the Staff Director's report.

7 These areas include but are not limited to voting rights, education, immigration, the administration of justice, economic opportunity, the media, etc.

the recommendations contained at the end of the report. This is the first such occasion in which a report of this size and importance has been approved in such a manner while we have served on this body. In fact, other reports of this magnitude that include findings and recommendations have been passed only after discussion between Commissioners and staff of the contents of such drafts, debate among Commissioners, review of affected agency responses to drafts, and careful refinement of findings and recommendations.[8]

After a thorough review of this report, we can reach no other conclusion that the extensive problems with this report could not have been remedied by the further expenditure of Commission dollars in conducting a minihearing. If, in fact, additional documentation was/is required, under the current Commission statute, a number of avenues are available by which additional data and resource material could be obtained.[9] Instead, this report completely fails to satisfy, or otherwise address, any of the original objectives of this body in conducting a series of hearings on the issues of racism and poverty in the United States.

Substantive Concerns

Economic Development

It is commonly assumed by some, and implied by this report, that many of the ills in minority communities today are the product of policies adopted during the 1980s in which "the rich got richer and the poor got poorer."[10]

As a result of tax reform legislation enacted in 1986, approximately 4 million low-income Federal taxpayers were relieved of the financial burden of paying any Federal income tax. During these years,

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8 *See generally*, Meeting Transcript, U.S. Commission on Civil Rights, Nov. 9, 1990, pp. 27–56 (discussion of draft report on *Enforcement of the Indian Civil Rights Act of 1989*, allowing staff additional time to improve the draft); Meeting Transcript, U.S. Commission on Civil Rights, November 1989 and Mar. 2, 1990 (discussion of draft report on *The Economic Status of Black Women, Exploratory Investigation*, report passed in November 1989, pending inclusion of materials to be submitted by Commissioner Berry, in which Dr. Berry submitted a memorandum to the Commissioners including extensive analysis and suggestions for inclusion of additional substantive data to improve the report); Meeting Transcript, U.S. Commission on Civil Rights, Nov. 15, 1991, pp. 45–125 (discussion of draft report on *Civil Rights Issues Facing Asian Americans in the 1990s*, allowing staff additional time to make corrections and revise report in accordance with Commissioners' comments). Similar procedures were followed in approving the report following the first hearing in the Racial and Ethnic Tensions project, in the Mount Pleasant area of Washington, DC.

9 In addition to the powerful subpoena power possessed by this agency, the Commission has at its disposal the ability to make written requests for information from Federal agencies. It bears note that numerous subpoena duces tecum were issues in connection with this hearing, and many documents were received in response to the same.

10 This report begins with the following general premise:

> "Over the past several decades the United States has witnessed a progressive closing of the doors of economic opportunity to many Americans. The maxim, 'the rich get richer and the poor get poorer,' has been borne out in the United States' experience of the 1980's [sic]. [footnote omitted] Because minorities and inner city residents are overrepresented among the poor, the burden of these changes has fallen disproportionately upon them. . . ."
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> *Racial and Ethnic Tensions in American Communities: Poverty, Inequality, and Discrimination—Chicago Hearing Report*, U.S. Commission on Civil Rights, p. 2–3 (hereafter cited as *Draft Report*). This is not the place to analyze the economic and tax policies of the Reagan administration. Nor is this an appropriate place to consider the impact of pandemic levels of violent crime, family instability, and drug use upon the economic status of minority individuals and families. However, we would note that during these years, the United States enjoyed the longest peacetime economic expansion in its history, with the creation of approximately 18 million new jobs.

the richest 1 percent of all American citizens saw their share of Federal income taxes increase to more than 26 percent of all individual Federal income tax receipts—up from the less than 20 percent level of 1980. At the same time, for the vast majority of Americans, namely 80 percent, the tax rate was no more than 15 percent. These years also saw real increases in Federal spending for basic cash and in-kind low-income assistance programs of more than $23 billion, or 13 percent in terms of constant dollars. Finally, we would observe that during this time, real per capita income for African Americans was up 16 percent, and African Americans were finding jobs at a rate of twice that for other Americans. Hispanic Americans also experienced remarkable economic improvement with nearly a 14 percent real per capita income growth, and 2.4 million new jobs.

Most of the text in Part One is devoted to mortgage lending, a topic that related in part to the economy, but which is a very small component of economic development. Nevertheless, the bulk of this section dwells on issues related to the availability of mortgage credit. The report concludes without much support, discussion, or analysis—other than citation to a few reports and witness testimony—that extensive discrimination exists in the granting of mortgage credit to minorities in Chicago. Little if any is said about success stories, such as the examples provided by South Shore Bank or Banco Popular, both in Chicago. Moreover, approximately 1 month before this report was approved, in a briefing before this Commission, Governor Lawrence Lindsey of the Board of Governors of the Federal Reserve System pointed out that the real challenge is in identifying where in the lending process a problem is taking place.

Finally, these chapters do very little to advance what should or could be done to increase minority business development and overall business development in minority communities. To fully understand minority economic development in Chicago, data on relative access to credit and capital faced by Chicago's minority entrepreneurs or business owners, as compared to credit and capital obstacles faced by others, deserved at least more attention than was given in the report. In short, the issues related to the causes of lack of access to credit and capital for business purposes are considerably more complex than they are for home mortgages and should have been developed more extensively in this report.

Segregation

This report observes that Chicago is "one of the nation's most segregated cities," an assumption that the Commission was aware of prior to the hearing.[11] At the hearing, however, we received testimony that there exists in the midst of this segregation, a number of integrated communities with a "welcoming atmosphere" whose "quiet successes [are] often drowned out by the media's attention to more dramatic events." We believe that it is a serious and unacceptable shortcoming of this report that it does not address the lessons to be learned for Chicago and other American cities from the history of these viable, integrated communities. Moreover, this failure is an example of others in which this report neglects to recognize the leadership by example in the area of civil rights that is taking place in many American communities.

Health Care

Another type of problem with this report is apparent in the chapter dealing with health care in Chicago for minority groups. The Commission heard testimony that Chicago's Cook County Hospital is a "crumbling, old, nonfunctional physical plant: that "should have been replaced, probably in the early [19]40s."[12] In our opinion, the report does not adequately examine the reasons for the history of neglect surrounding Cook County Hospital, nor does it assist those attempting to find solutions for better health care for Chicago's poor communities by suggesting that "the health care system cannot operate on the premises of a free market" or by implying that tax increases and a national health care system is the solution to this situation. Neither does the report serve the best interests of these communities by

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11 *See generally*, Draft Report, pp. 3–7.

12 *See*, Draft Report, p. 77, n. 356 and accompanying text.

suggesting that the scarce financial resources of this institution be diverted from areas such as primary care and treatment of serious ailments, to guaranteeing that health services are provided in a "cultural context appropriate to their patients."[13]

Police-Community Relations

While police-community relations was a major focus of the Commission's hearing in Chicago, as it has been in hearings in other cities, this report and its recommendations will do little, if any, to improve police-community relations in the city of Chicago. The primary reason, in our opinion, is that although it is clear that improvements in police behavior and training are needed, the report gives the appearance of too often accepting uncorroborated allegations of police misconduct from plaintiffs' attorneys who regularly litigate cases against the police and from organizations that have been highly critical of police misconduct.

At the same time, the report shows little regard or concern for the realities of daily work undertaken by police of all races and ethnicities in Chicago. One example of this is the report's apparent discomfort with the so-called "one-on-one rule," which generally acts to dismiss complaints against police officers when the allegation involves only the complainant's word against that of the accused officer without corroborating evidence, or the testimony of an independent witness.[14] The report recommends that this result should be avoided by using prior allegations—not actual findings—of misconduct against an officer to impeach the officer's testimony, even when those allegations have been held to be unfounded, not sustained, or where the officer has been exonerated.[15] This recommendation is incredible and conflicts with fundamental evidentiary precepts in the American legal system, which does not allow this type of evidence for impeachment purposes and, in most instances, excludes this type of evidence altogether.

Findings and Recommendations

Finally, we think it inadvisable for the Commission to adopt the type of wide-ranging policies that appear as recommendations on the slim record of this hearing and virtual lack of discussion by Commissioners regarding the merits of such policies. Two examples should suffice. First, while the Commission is currently planning a hearing to assess the present necessity and effectiveness of affirmative action quotas in employment, the report recommends that "The City of Chicago Department of Personnel must develop and implement comprehensive and targeted written recruitment plan for Hispanics."[16] Second, while the Congress and the Governors of many States have sought and recently obtained reform legislation to restore a much-needed balance regarding questions of unfunded mandates, it is ill-advised of this report to recommend that Congress impose new financial liabilities on municipalities under Federal civil rights laws for the actions of its police officers.[17]

We wish to draw particular attention to the recommendation that "the Federal regulatory agencies should hasten to adopt revisions to the CRA regulations to enhance the enforcement of the CRA. They should incorporate the changes suggested by the Commission in the final regulations."[18] This recommendation is an absolute misrepresentation of the Commission's position and should never have been included in this report. The "changes suggested by Commissioners in the final regulations" were not suggested by the Commissioners as the text indicates but were comments submitted by a former Acting Staff Director on behalf of the Commission—against specific instructions from a majority of the

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13 Draft Report, p. 203.

14 *See* Draft Report, pp. 151–56.

15 Draft Report, p. 208.

16 Draft Report, p. 207.

17 Draft Report, pp. 210–11.

18 Draft Report, p. 199.

Commissioners not to submit the same.[19] We in no way endorse this recommendation or the comments used as a foundation for this recommendation.

For these reasons, among others, we decline to support the issuance of the report in its present form and have entered these separate views in the hope that subsequent reports in this series may yet present a balanced and accurate report of the work of the Commission to achieve a reduction in racial and ethnic tensions in our national life.

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19 Comments to Proposed Revisions to the Community Reinvestment Act, prepared by Stuart J. Ishimaru, submitted to the Federal Deposit Insurance Corporation, Mar. 24, 1994 (on file with the U.S. Commission on Civil Rights).

Dissenting Statement to the Report on the Chicago Hearing Racial and Ethnic Tensions in American Communities: Poverty, Inequality, and Discrimination

By Commissioner Robert P. George

Commissioners Anderson and Redenbaugh and Horner have made many compelling criticisms of this report in their dissenting statements. I would add the following concerns.

The report shows no awareness of the serious debate taking place in our nation concerning the stranglehold that entitlement-based welfare policies have imposed on the poor, particularly poor minorities. The electoral revolution which swept a new majority into Congress in 1994 suggests, in my view, that Americans, including many in poor minority communities, are looking with new hope for free market, anti-statist solutions to the challenges of prejudice and poverty. Yet this report takes a reactionary approach, looking backward in order to support failed government controlled programs that have aggravated social tensions and problems.

For example, it directs a whole section and several findings and recommendations to thinly disguised support for last year's rejected proposals for a government run health care system. While the report mentions several Clinton Administration HUD proposals that move in the direction of free markets and tenant choice for public housing residents (commendable ideas which resemble proposals advanced by President Bush's HUD Secretary Jack Kemp for empowering the poor), this report follows last year's Commission publication on the fair housing amendments in choosing to rail ineffectually against "segregation," remaining silent on bipartisan efforts which promise to open up greater opportunities for minority home ownership. (See reservations expressed in my Concurring Statement to the Report of the U.S. Commission on Civil Rights, *The Fair Housing Amendments Act of 1988: The Enforcement Report*, p. 233.) Thus, in this opportune time for a report to Congress, the Civil Rights Commission, which is legally obligated to provide Congress with useful information, has missed its chance to contribute to one of the most far-reaching policy debates on critical issues within our jurisdiction.

Apart from the obsolete social model on which this report is based, it is also flawed by a significant procedural defect. At the Commission's September 1994 meeting, I pointed out that reports of the Commission, the staff, and the State Advisory Committees frequently conclude with important findings and recommendations, but supporting data, whether from the report itself or elsewhere, is not cited. The Chairman expressed the Commission's and the staff's agreement that in all future reports, specific data supporting findings and recommendations would be footnoted so that the factual basis for our conclusions is made clear. Yet this report almost totally disregards that requirement. The fact that the authors disregarded this simple technical standard only strengthens the doubts detailed in the other dissenting statements about factual support for the report's key conclusions.

I believe this report falls below the standard of serious analysis which the Commission on Civil Rights should uphold and does not merit publication.

Dissenting Statement to the Report on the Chicago Hearing Racial and Ethnic Tensions in American Communities: Poverty, Inequality, and Discrimination

By Commissioner Constance Horner

This report is exactly what the U.S. Commission on Civil Rights was created to avoid. That there are fully four dissents to the report makes it clear that the arduous deliberation, cooperation, and debate necessary for the Commission to achieve consensus and lead the Nation on tough issues was abandoned. ***The report was not even approved by a majority of the Commission.***

No effort was made to accommodate the objections of the dissenting Commissioners. Two and a half years have passed since the hearing was held in Chicago, yet the will and effort was not mustered to achieve better than a four-to-four split on the Commission. Rather than a report that will open minds and lead the nation, this is an ideological opinion piece that will simply further divide Americans by reinforcing group differences and racial animosities. Therefore I must dissent.

The following thematic critique in no way represents the extent of my criticisms.

Hopeless Condescension

The values presumed in this report are deficient, leading to a counterproductive use of the evidence and to wrongheaded prescriptions. For example, the report is condescending (if not downright racist) in its assumption that minorities (by fact of being minorities) are so inescapably mired in victimhood as to have no personal control over their lives and destinies.

A running theme throughout the report is that minorities (Hispanics in particular) are "underrepresented" and "underutilized" in the provision and acquirement of education, financing, health care, job training, public housing, and police protection. But the report ignores the failure of minorities (again, Hispanics in particular) to complete even their basic education, which is the increasingly necessary first step toward achieving "representation" and opportunity.

We are presented with the patronizing view that minorities are unable to complete their education, and so, therefore, must simply be employed proportionally in professions and vocations even when they are unqualified. For example, the report says that "low educational attainment . . . ***exclude[s]*** Latinos from participation in training programs," (my emphasis) (p. 89), the assumption being that the problem is with the training program rather than with the low level of educational attainment.

This defeatist mentality is exemplified in the opening pages of the report, discussing how "industrial restructuring" (the replacement of manufacturing industries by the service sector) has affected minorities. The report, in a blind swipe, *almost* hits the nub of the issue when quoting some "supplemental testimony":

> College educated blacks have taken advantage of the expanding opportunities in the professional and technical sectors of the service economy. Conversely, those blacks who dropped out of high school or have not gone to college find themselves hurt. . . . Although white workers also suffered from the loss of manufacturing jobs in Chicago during the 1980s, their generally superior education tends to make them more flexible. (p. 6)

But rather than focusing on this need for improved and completed education, the report implies that minorities must be allowed to succeed in a changing economy without changing themselves. But experience has shown that those who do benefit and succeed in changing economies do so by ***adapting,*** not by waiting for and relying on government services.

This report's demeaning attitude—focusing on equal results rather than equal opportunity—flies in the face of history and current reality, ignoring the great advances that we know are possible when individuals are given true *opportunity.*

Police-Community Relations

Potential abuse of police power is undeniably worthy of scrutiny. However, the section on "Police-Community Relations in Chicago"—as Chicago Police Superintendent Matt Rodriguez rightly points out in his letter which is included as an appendix to this report—is so narrowly focused on the issue of excessive force that it belies its title, which implies a thorough examination of the many issues that compose police-community relations. Even within the discussion of excessive force, the report focuses on mere ***complaints*** rather than proven misconduct. There is no justification for presuming officers to be guilty before proven so, nor is there justification for the recommendation of violating their due process in order to boost the rate of sustained citizen complaints.

The report assumes that if an officer has a complaint history, he lacks "credibility" (p. 147) and in a "one-on-one" situation automatically should be presumed guilty. But the report never addresses how previously unsustained complaints are material in determining guilt under a current complaint. That "the majority of excessive force complaints were not sustained" (p. 147) means nothing when unaccompanied by an indication that more than half (or even more than 11.1 percent) ***should have been*** sustained for whatever reason.

The report finds that "repeaters" (officers with multiple ***complaints*** lodged against them) "have been and continue to be a significant problem within the Chicago Police Department" (p. 148). Again, officers are assumed to be guilty on the basis of mere ***complaints.*** But five complaints over a 3-year period against an officer who deals regularly with gangs, organized crime, prostitution, and drug dealers may easily all be bogus. The report does not satisfactorily study the correlation between the number and kinds of complaints, the area where the officers served, and the kinds of dispatches to which they were frequently called, to determine a typical level of unfounded or wrongful complaints.

Structurally and Analytically Weak

Overall, I find the report to be analytically sloppy, heavy on witness opinions, and light on data and evidence. The report seems to be based on a preconception of what it would find and say, and it fails to develop areas of potential progress. It is unimaginative and uninquisitive, merely piecing together bits of testimony in the time-tested bureaucratic format while letting glimmers of hope slip through unexplored, and glaring questions go by unanswered, if not entirely unaddressed.

The ever-present theme of Commission reports that government is the only answer, but that government is also the biggest problem, is not lost in this report. But there is no mention of government obstacles to economic development and opportunity such as the Davis-Bacon Act. The treatment of public housing, even under the so-called "New Remedies" section (p. 49), contains no examination of incentives for people to escape public housing. There is no significant discussion of housing vouchers or the selling of public housing to its occupants.

A study is cited showing that "Gautreaux families" who were moved to middle-class suburbs "experienced improved employment" and their children "did better in school than observers expected" (p. 47). This potentially good news is not explored. The report does not pursue the ***actual*** figures on employment and education in public housing. Are the improvements significant or merely "better than expected"? What is the feasibility and cost to taxpayers of locating public housing in "middle-class suburbs"? Does providing free or subsidized housing in the first place help or hinder these families? Does public housing provide any incentive or leg up to families on their road out of poverty?

Similarly, the treatment of Latinos and public housing is insufficient. The report accepts at face value the unsubstantiated contention that "perceptions that public housing is only for African Americans has limited Latino participation in the program"(p. 55). But nothing certifies the finding that the "lack of a visible Hispanic work force" is a "barrier" that "exclude[s] Latinos from participating in public housing" (pp. 142–143). My instincts—and the lack of evidence—tell me that there must be more to it than this. More investigation of ***why*** Hispanics are "reluctant" to use public housing is essential. Are cultural factors involved? Do they have alternatives such as family? Where ***do*** poor Hispanics who might otherwise live in public housing actually live? Do they fear crime?

There appears to be an overreliance on witness testimony without regard for evidence or facts to back it up. Specific criticisms are presented without any apparent effort to verify their validity. While it is certainly legitimate and useful to convey the impressions of witnesses, mere impressions should not be passed off as fact. For example, witnesses accused the Federal Reserve of ignoring the complaints of community groups with regard to revised Home Mortgage Disclosure Act regulations. The Fed disputed this contention, saying that community group complaints came in after the comment period had expired and after the regulations had already been published. The author could easily have verified and presented the ***facts*** and ***dates*** to resolve this disagreement but instead chose to place the Fed on the defensive and frame the issue in the terms that best fit its agenda (p. 22).

Another questionable use of testimony is the disproportionate (to use a familiar word) reliance on the testimony of a single individual in the chapter on "Federal Enforcement of Antidiscrimination Laws in Economic Development." In that single 19-page chapter there are at least 35 direct textual references and more than 40 footnote citations to Dr. Calvin Bradford, President of Community Reinvestment Associates. Such reliance on any one individual precludes a full and balanced presentation of the diverging perspectives on the very controversial issue of lending bias and access to credit.

The report molds definitions to fit and further its preconceptions. In the police-community relations section, the report finds that (alleged?) "victims of police misconduct are ***often*** charged with one of a 'trilogy' of pretext offenses of disorderly conduct, battery, and resisting arrest, to justify an officer's use of force. Approximately 20 percent of the 500 citizen complaints and investigations reviewed by the Commission involved these charges" (p. 149). Aside from the automatic but unfounded assumption that the officers are guilty and the complainants are "victims," there are absolutely no data showing that 20 percent is "often" nor any investigation of what part (if any) of that 20 percent are wrongful charges.

In the health care section, the issue of bilingualism is infected by the infusion of such concerns as "the lack of models of health care delivery that emphasize diversity and multicultural approaches" (p. 63). The report fails to define "multicultural," but it leads one to believe that only certain cultures qualify as "multi" when it proclaims that "of the city's 19 medical clinics and 18 medical health centers, ***about four clinics serve multicultural clientele***" (my emphasis) (p. 63). Who makes up this mono-cultural, or non-multicultural, bloc constituting the clientele of the other 33 clinics? How far do we go to "ensure that health services are provided in the . . . cultural context appropriate to their patients," and is this where the health benefit lies? (p. 144) Is the medical technology and leadership of this nation to be compromised so as to be "culturally sensitive" to "a home remedy of coin rubbings" as suggested in the report (pp. 67–68)? Does promoting advanced American medical techniques over home remedies really interfere with immigrants' access to health care?

When the report does attempt to follow evidence or logic, it often does so sloppily. The issue of language barriers is exaggerated in that the report automatically equates being a Hispanic with the presence of a language barrier, as in the finding (p. 144) justifying the need for more "bilingual staff" because 18 percent of inpatient admissions at the Cook County Hospital were Hispanic. This ignores the fact that many—if not most—Hispanic Americans can communicate in English.

A clearly faulty standard is used to judge the success of the Chicago Reinvestment Alliance, claiming it a success because of the millions of dollars it has extracted from private banks (p. 24). However, to determine that the Alliance is a legitimately successful community organization exerting justified community pressure, one must examine the default rate of the loans that the Alliance persuaded banks to make. If the Alliance's default rates are significantly higher than normal default rates, then the Alliance is merely engaging in extortion and encouraging the very kind of permissive loan practices that Dr. Bradford cited as having "a devastating effect on minority neighborhoods" when practiced by the FHA and the VA (p. 29).

Most outrageous of all, at least once the report moves beyond sloppiness into pure deceit. In a March 24, 1994, memorandum a decisive number of Commissioners (four) specifically rejected the Commission staff's draft comment letter on proposed revisions to Community Reinvestment Act regulations, stating that "we believe that in general the proposals contained in the draft letter will do nothing to increase the availability of credit to these communities and could even be counterproductive." Later the same

day, directly contravening the directions of the Commissioners, the Commission's acting Staff Director submitted under his own name without any disassociating comments the very same letter that the Commissioners had earlier rejected. Then these renegade comments—sent out in stealth and in flagrant violation of the policy directive of the Commission—now show up as the basis for a finding and recommendation in this report (p. 141–142). So, in short, the Commission on Civil Rights has just approved a report recommending ***exactly*** what the Commission on Civil Rights explicitly rejected 1 year ago, without any discussion or explanation of the switch. Such behavior is less surprising, however, when one is aware of the background leading up to this report.

Background

A November 17, 1994, memorandum from the Staff Director recommended that the Commissioners approve a minihearing in Chicago to gather information to supplement deficiencies in the record of the original hearing that is the basis of this report. At a Commission meeting the following day, it was clear that there were enough votes to hold the minihearing on the condition that Commissioners received certain basic background information from the Staff Director, such as a copy of the draft report, the criticisms from the Chicago Police Department of the draft report, and the specifics of what the proposed minihearing would entail. When these conditions were not met, the Commissioners voted against holding the minihearing.

At the December 16, 1994, Commission meeting the Staff Director informed the Commissioners that "staff has been directed to prepare a report on the Chicago hearing based on the records that we currently have available." However, the draft that we eventually received—which is the report before you now—does not even meet this limited standard. An insufficient hearing record might certainly limit the ***scope*** of a report, but it does not justify lowering the evidentiary threshold necessary to support findings and recommendations, nor does it excuse sloppy analysis or unsubstantiated statements and allegations.

In the past I have voted for Commission reports on the basis of the reasonableness of the findings and recommendations, even when I disagreed with the rhetoric of the body. This report, however, is so ill-constructed and poorly reasoned that even the soundest findings and recommendations could not justify acceptance of the body. I suspect that the rhetorical bias is in part intended to mask the evidentiary and analytical deficiencies of the report.

Conclusion

As a bipartisan organization embodying a spectrum of world views and perspectives, the Commission on Civil Rights represents the diversity of opinion in the United States and is intended to achieve some semblance of unanimity—as difficult as that sometimes may be—on controversial and divisive issues that face our nation. The Commission is made up of an even number of members so as to encourage cooperation and consensus over mere politics. When this Commission joins together—as it did to focus on racial and ethnic tensions, the purported basis of this Chicago report—it represents more than the majority vote of a Federal Commission: it is a consensus synthesizing the best of competing ideas. Sadly, this report cannot be included within that tradition.

May 4, 1995

Appendix

Total Complaints by Police District
(Cumulative Closed Cases)

District	1987	1988	1989	1990	1991	1992*	Total
1	91	91	107	99	143	64	595
2	163	240	255	227	262	125	1,272
3	226	296	305	295	299	125	1,546
4	147	235	204	217	226	115	1,144
5	162	187	200	239	270	101	1,159
6	127	200	211	230	243	109	1,120
7	181	288	330	372	371	136	1,678
8	138	198	136	177	219	78	946
9	117	186	160	226	252	113	1,054
10	136	173	170	203	208	87	977
11	162	227	241	247	248	82	1,207
12	74	112	110	145	169	52	662
13	81	117	97	110	145	39	589
14	184	293	272	299	257	99	1,404
15	118	157	145	167	181	83	851
16	57	76	83	89	94	45	444
17	70	90	108	102	123	58	551
18	157	206	230	196	259	106	1,154
19	95	124	106	119	138	73	655
20	95	126	102	131	157	64	675
21	84	140	135	157	156	64	736
22	85	96	93	124	115	61	574
23	123	178	130	215	196	87	929
24	107	189	146	139	175	56	812
25	129	152	139	171	255	108	954

*Cumulative closed cases through May 1992. Total complaint register investigations per accused member's unit of assignment, includes complaints of excessive force, verbal abuse, civil rights violations, and other categories.
Source: Chicago Police Department, Internal Affairs Division.

Excessive Force Complaints by Police District
(Cumulative Closed Cases)

District	1987	1988	1989	1990	1991	1992*	Total
1	40	29	31	26	38	17	181
2	70	103	94	75	100	26	468
3	91	137	117	88	96	48	577
4	67	95	41	51	65	40	359
5	65	77	67	71	95	36	411
6	54	91	74	68	81	24	392
7	75	155	129	132	146	50	687
8	55	85	39	38	61	18	296
9	59	85	57	77	82	34	394
10	62	88	69	85	83	34	421
11	63	115	74	93	87	29	461
12	27	53	39	33	57	16	225
13	37	57	35	35	50	12	226
14	102	170	120	132	125	34	683
15	57	86	51	62	81	27	364
16	26	36	25	26	24	16	153
17	31	53	41	40	46	19	230
18	73	103	63	73	103	26	441
19	51	65	32	47	56	20	271
20	41	69	44	42	66	25	287
21	31	66	46	46	54	24	267
22	31	36	25	34	37	21	184
23	63	105	65	83	77	28	421
24	53	90	54	57	62	17	333
25	59	77	41	51	93	32	353

*Cumulative closed cases through May 1992.

Source: Chicago Police Department, Internal Affairs Division.

Civil Rights Violation Complaints by Police District
(Cumulative Closed Cases)

District	1987	1988	1989	1990	1991	1992*	Total
1	0	0	1	0	3	2	6
2	2	6	16	11	19	8	62
3	7	9	17	23	19	9	84
4	1	4	6	15	12	11	49
5	3	1	13	7	9	5	38
6	2	5	8	8	9	10	42
7	3	9	27	27	26	16	108
8	2	4	9	6	8	2	31
9	1	6	7	16	33	13	76
10	6	8	8	11	13	6	52
11	4	4	22	11	22	6	69
12	0	3	3	8	17	6	37
13	1	6	9	13	9	2	40
14	6	8	19	13	10	5	61
15	3	5	8	9	18	12	55
16	1	1	2	4	3	1	12
17	2	1	4	6	5	5	23
18	0	2	6	6	7	5	26
19	1	1	3	5	11	3	24
20	2	2	7	11	11	7	40
21	3	2	6	5	7	2	25
22	0	1	7	5	5	4	22
23	0	2	1	9	11	3	26
24	3	5	11	7	9	3	38
25	2	5	0	7	16	7	37

*Cumulative closed cases through May 1992.

Source: Chicago Police Department, Internal Affairs Division.

Verbal Abuse Complaints by Police District
(Cumulative Closed Cases)

District	1987	1988	1989	1990	1991	1992*	Total
1	11	8	8	9	16	9	61
2	6	21	22	18	14	15	96
3	11	25	32	19	22	9	118
4	2	23	17	20	10	8	80
5	2	12	18	16	16	8	72
6	9	18	17	13	15	12	84
7	8	23	23	29	28	23	134
8	15	25	17	19	20	11	107
9	5	24	16	15	15	6	81
10	9	14	16	12	10	6	67
11	10	16	17	12	16	8	79
12	9	11	7	10	12	7	56
13	4	7	9	6	10	2	38
14	9	29	16	16	15	12	97
15	3	13	11	14	9	9	59
16	1	6	10	9	11	6	43
17	5	7	10	0	6	5	33
18	22	25	37	18	29	24	155
19	6	13	11	18	10	11	69
20	6	12	7	18	12	5	60
21	5	8	19	15	14	9	70
22	8	16	11	10	13	9	67
23	8	15	14	19	18	9	83
24	12	23	23	13	19	6	96
25	7	10	15	12	18	13	75

*Cumulative closed cases through May 1992.

Source: Chicago Police Department, Internal Affairs Division.

Disorderly Conduct Arrests by Police District

District	1989	1990	1991	Total
1	6,722	6,514	5,724	18,960
2	2,604	2,728	2,938	8,270
3	2,069	2,615	1,801	6,485
4	896	1,050	1,096	3,042
5	1,248	1,804	2,167	5,219
6	1,615	2,007	2,790	6,412
7	1,658	2,343	2,227	6,228
8	1,052	1,330	1,680	4,062
9	1,464	1,615	1,613	4,692
10	1,475	2,314	2,299	6,088
11	2,060	2,661	3,837	8,558
12	1,613	2,066	2,053	5,732
13	964	1,437	1,562	3,963
14	2,018	2,672	2,694	7,384
15	1,382	2,141	2,525	6,048
16	1,222	1,699	931	3,852
17	557	947	1,242	2,746
18	3,955	3,775	3,904	11,634
19	1,653	1,864	1,937	5,454
20	1,222	1,268	1,381	3,871
21	1,159	1,343	1,445	3,947
22	484	620	619	1,723
23	3,651	3,615	3,123	10,389
24	1,105	1,828	1,939	4,872
25	1,163	2,026	2,452	5,641

Source: Chicago Police Department, 1989-1991 Arrest Files.

Civil Suits by Police District

District	1987	1988	1989	1990	1991	1992*	Total
1	0	1	0	1	2	0	4
2	1	0	2	0	1	0	4
3	1	1	0	0	1	1	4
4	1	1	2	1	0	0	5
5	0	2	3	4	1	1	11
6	0	1	0	1	1	0	3
7	0	3	4	1	2	0	10
8	0	0	1	0	1	1	3
9	0	1	2	1	0	0	4
10	0	0	0	1	0	0	1
11	0	0	0	0	0	0	0
12	0	1	2	1	0	0	4
13	0	0	0	0	1	1	2
14	0	1	1	1	2	1	6
15	0	0	1	0	0	0	1
16	0	1	1	2	0	0	4
17	0	0	3	0	1	0	4
18	1	1	1	2	0	1	6
19	0	0	1	0	0	0	1
20	0	0	0	0	0	0	0
21	2	1	3	1	1	1	9
22	1	0	0	0	0	0	1
23	1	0	0	0	1	0	2
24	2	1	1	1	0	0	5
25	0	0	0	1	2	0	3

*Cumulative closed cases through May 1992.

Source: Chicago Police Department, Internal Affairs Division.

Disciplinary Action Recommended

Disciplinary action	1987	1988	1989	1990	1991	Total
Reprimands	19	35	13	11	20	98
Suspension (1-5 days)	84	89	85	117	219	594
Suspension (6-15 days)	17	27	35	80	123	282
Suspension (16-30 days)	18	26	27	40	85	196
Resigned during investigation	0	1	2	0	0	3
Separation	20	10	11	16	32	89

Source: Chicago Police Department, Office of Professional Standards, Complaint Register information.

CITY OF CHICAGO / DEPARTMENT OF POLICE
1121 South State Street
Chicago, Illinois 60605

(312) 744-4000

Text Telephones
(312) 922-1414 (24 Hrs & Emergency)
(312) 744-8006 (Business Hours)

Richard M. Daley, Mayor
Matt L. Rodriguez, Superintendent of Police

May 23, 1994

Rosalind D. Gray
Acting General Counsel
United States Commission On Civil Rights
624 Ninth Street, N.W.
Washington, D.C. 20425

Re: U.S. Commission on Civil Rights Report on Racial and Ethnic Tensions in American Communities: Poverty, Discrimination and Inequality -- Chicago Hearing

Dear Ms. Gray:

Thank you for the opportunity to review and comment upon the confidential draft of Part III of the Commission's report on Racial and Ethnic Tensions in American Communities: Poverty, Discrimination and Inequality -- Chicago Hearing.

The topic of police-community relations raises extremely important, complex and emotional issues. The Commission no doubt discovered this during the two years in which you researched and prepared the draft report. For me to provide a detailed response on such a difficult and multifaceted topic in the limited time allotted for comments on the confidential draft is impossible. Instead I will comment on particular points made in the confidential draft and discuss the City's new initiative in police-community relations, Chicago's Alternative Policing Strategy (CAPS).

I am very concerned that in its present form the report does not shed light on the issue which the Commission set out to examine in 1992. While the Commission purports to examine "Police-Community Relations in Chicago," the focus of the report is on one limited aspect of police-community relations, allegations of excessive force. By focusing on only one aspect of the relationship between police and the community they serve, the Commission presents an unbalanced picture of police-community relations in Chicago. The confidential report does not address the more fundamental and more meaningful issues of how the community views members of the police department and how police and the community relate to one another. The report

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does not discuss how the community participates in policing in Chicago and how the police and community work together in preventing crime and solving problems. Still further, the draft displays insufficient recognition of the differences between the situation in the <u>past</u> and the present (both in terms of applicable law and factual developments). Examination of all these factors is essential for a balanced assessment of current police-community relations.

Please do not misinterpret this concern about the narrow focus of the draft report. Police misconduct is a serious issue and is not and will not be tolerated in the Chicago Police Department. I delivered that message clearly and forcefully during my testimony before the Commission in June, 1992. I have continued and will continue to deliver that message clearly and forcefully to all members of the Department and the community. However, I am particularly concerned about the impact an unbalanced final report by the Commission may have on the developing partnership between police and community in Chicago, especially at a time when that partnership has become a central unifying theme of our new community-oriented philosophy of policing.

The confidential draft's heavy reliance on the subjective and empirically unsubstantiated testimony of attorneys whose practice is largely devoted to litigation against the Chicago Police Department and other law enforcement agencies, results in conclusions which are based on biased and unreliable testimony. Moreover, while the report is critical of Department procedures, particularly in the areas of discipline and citizens' complaints, it offers no constructive suggestions for improvement. Although the Commission notes the existence of alternative strategies for responding to citizens' complaints, no evidence is presented suggesting that the alternatives discussed in the report are, in fact, more successful or even as successful in addressing citizens' concerns as the City's current policies.

With respect to the complaint and disciplinary processes of the Chicago Police Department, the confidential draft contains criticism of the Office of Professional Standards (OPS), the Chicago Police Department's civilian investigative agency, and the Police Board, an independent civilian review board. OPS is charged with receiving complaints by members of the public and police personnel. OPS retains those complaints within its jurisdiction, specifically all complaints of excessive force, and transfers other complaints to the Internal Affairs Division (IAD) for investigation. OPS is staffed by civilian investigators directed by a civilian administrator who

reports directly to the Superintendent. The Chicago Police Board is a civilian oversight and review board appointed by the Mayor and independent from the Chicago Police Department. The Board is charged with adopting rules and regulations for the Department, holding public hearings in cases where the Department recommends discipline in excess of 30 days up to and including discharge, and serving as a review board in cases where officers are suspended by the Department for six (6) to 30 days.

In discussing the disposition of Police Board cases involving allegations of excessive force, the Commission incorrectly assumes that all cases heard by the Board are recommendations for separation. In fact, in addition to suspension review cases in suspensions of six (6) to 30 days, the Department may recommend suspensions of more than 30 days, which also are heard by the Board. The report's analysis of Board dispositions in excessive force cases does not account for this fact. In addition, the report does not take into account the fact that some officers choose to resign rather than submit to a Board hearing. In these cases where an officer resigns, the Department withdraws its charges. The report incorrectly characterizes these withdrawn charges as failures to discipline officers, when, in fact, these officers have been separated from the Department.

The draft report suggests that OPS would be more effective if it were independent of the Chicago Police Department and had subpoena power. However, the draft report offers no evidence that such changes would result in more effective handling of citizen complaints. The Commission heard testimony that OPS is one of the more powerful civilian investigative agencies in any police department, because it is a part of the Superintendent's Office. Available to OPS is the full array of investigative tools of the Chicago Police Department, including access to photographs of every Chicago police officer, crime lab services, and the Records Division of the Department. In addition, because it operates with the full authority of the Superintendent, OPS has the power to compel police personnel to appear and cooperate with OPS investigations.

While the Commission heard testimony advocating the separation of complaint investigation from the Department, no one testified that such a separation would improve the quality of the investigations completed by OPS or increase the number of sustained cases. Although there were references made in the report to "independent" civilian review panels in other cities, the report does not distinguish civilian investigations from civilian review and never offers support for a conclusion that

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these systems are more effective or even as effective as the Chicago system.[1] In its recent assessment of the various forms of complaint investigation and review employed by police agencies across the country, the Police Foundation noted that there is a debate over what type of system is most effective with no clear choice. See Police Use of Force, Vol. 1 at p. 37-38 (Police Foundation 1993). The Commission report offers no empirical support for resolving this debate in favor of "independent" civilian investigation or suggesting that separating OPS from the Department would make it more effective.

The report also criticizes OPS for applying inconsistent standards of proof. I would like to take this opportunity to reiterate that the standard of proof applied by OPS and IAD is proof by preponderance of the evidence. The IAD investigator to whom you referred on page 138 of the confidential draft was incorrect if he applied a clear and convincing standard to an internal investigation. One IAD investigator's isolated misapplication of the standard, however, does not stand as an indictment of the department's complaint review system.

The report also seems to be critical of the number of complaints received by OPS and the number sustained. However, criticism based on these numbers is not well-founded. The Commission offers no evidence to suggest that the rate of complaints is too high or the rate of sustained cases is too low. No citation is made to analysis of comparable data from other cities.

Critical to any comparative analysis of Chicago's level of citizens' complaints is ensuring at the outset that complaint rates are comparable. OPS has an extremely open intake system for citizens' complaints. Complaints against City police officers are not prescreened. They are made in person and over the phone to civilian investigators housed in a facility separated from the police department. The result of this type of open system, by its nature and design, is to increase the number of complaints filed. Moreover, the more open and accessible the complaint system and the more confident citizens

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[1]The report does not distinguish civilian investigation from civilian review. As noted above, Chicago employs civilians in both capacities, an internal investigative agency and an external, independent oversight and review board. Any comparison of other systems must be sensitive to this distinction.

are in the fairness of that system, the more likely they are to complain.

The Police Foundation noted with regard to complaint rates that while "[f]requently assumed to provide a measure of police performance, the complaint rate is one of the most badly abused police-based statistics. Thus, an increasing number of complaints filed with a particular agency may not reflect a deterioration in standards of officer behavior, but could be interpreted as indicating a sign of increasing citizen confidence in the complaints systems." Police Use of Force, at p. 35. Given the unreliability of complaint rates themselves as an indicator, the percentage of sustained cases based on those complaints is without meaning. Nothing offered by the Commission suggests that the 11.1% rate is not an appropriate one given OPS' intake system. In summary, the use of complaint rates and sustained rates says nothing about the status of police-community relations in Chicago and nothing about the efficiency of the Department's complaint review system.

The draft report's brief section on "Recruitment" does acknowledge the Chicago Police Department's efforts to encourage increased minority representation in the force. This itself is an aspect of police-community relations (and intra-departmental relations) that deserves extensive treatment. As a matter of elementary employment law, the comparison between the demographic profile of the City's total population and that of police officers is not directly relevant. See, e.g., Watson v. Fort Worth Bank & Trust, 487 U.S. 977, 997 (1988); Hazelwood School Dist v. U.S., 433 U.S. 299, 308-09, 310-12 (1977). Nevertheless, I agree to the extent the draft report intends to suggest there are operational justifications for increasing minority representation on the police force commensurate with the population served.

In this regard, it is also worth noting that, based on findings of past discrimination and following consent decrees entered into with the U.S. Department of Justice, the Chicago Police Department has implemented minority promotional goals and has taken other measures over several years to remedy this past discrimination. The City is vigorously defending these actions against numerous "reverse discrimination" challenges in Federal Court. See, e.g., U.S. v. City of Chicago, 897 F.2d 243 (7th Cir. 1990).

The remainder of the draft report contains a number of other criticisms of various Chicago Police Department programs and policies, most of which are based on the testimony of the attorneys who file suit against the City, referred to above.

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In addition, the statistical analysis attempted by the Commission is based on inadequate samples and reaches invalid conclusions. To respond point-by-point to these criticisms would take more time than has been allotted by the Commission.

It also was disappointing to find no constructive suggestions for improvement in the report. In the difficult task of investigating and disciplining officers who use excessive force, use racial epithets or commit other acts of misconduct, no system is perfect. It would have been helpful to find some suggestions for improvement in this difficult area among the criticism contained in the report.

The only real change advocated by the Commission is in the area of civil suits for damages under federal law. The recommendations, however, are not based on an analysis of the current state of the law. While addressing the pleading burden imposed on civil rights plaintiffs, the Commission did not cite the United States Supreme Court's opinion in Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit, __ U.S. __, 113 S.Ct. 1160 (1993). In Leatherman, the Supreme Court ruled on the pleading standard in 42 U.S.C. § 1983 cases and rendered moot most of the Commission's comments based on prior lower court decisions regarding the difficulty of pleading civil actions against a municipality. The report concludes, based solely on a newspaper article, that "the majority of civil rights claims against municipalities are dismissed on the pleadings." The article referred to by the Commission, however, cited Leatherman and indicated it is unclear whether that decision ". . . will broaden the liability currently faced by municipalities under the Civil Rights Act." Moreover, it appears no attempt was made to confirm, by reference to U.S. District Court records, the article's conclusion regarding the number of cases dismissed or to answer the question of Leatherman's effect on the rate of dismissals. Such an analysis of the current state of the law would seem prudent before advocating changes in the law governing municipal liability in § 1983 actions.

The Commission's report makes almost no positive reference to Chicago Police Department procedures, notwithstanding our efforts and the commitment of many dedicated Chicago Police Department personnel to improve the relationship between Chicago police officers and the community and to improve access by citizens to the Department. Included in those efforts, to name a few, are the following:

- sensitivity training,

- a new human rights directive,
- expanded management training,
- additional computerization of our early warning system,
- publicity of the Superintendent's corruption hotline,
- open and frank discussions of corruption between supervisors and employees at police roll calls and staff meetings,
- further enhancement to the foreign language bank and
- translations of many of our CAPS materials into multiple languages.

These represent significant promises I made and kept in my capacity as Superintendent to enhance responsiveness of the police department to the needs of the community. That the Commission conducted selected follow-up research which did not include any of these important developments is a serious defect in the draft report.

Perhaps the most significant omission from the Commission's selective follow-up is the failure to discuss one of the City's boldest initiatives to improve police-community relations, the Chicago Alternative Policing Strategy (CAPS). The Department is engaging in a new, more meaningful partnership with the citizens of Chicago. Citizens are being invited -- actively encouraged in fact -- to get involved in their neighborhood police operations. For the first time, residents are being given the opportunity to meet regularly with the police officers responsible for protecting their communities in a neutral, non- confrontational setting. In the five CAPS prototype districts, residents and police have been sitting down for more than year now to jointly identify and prioritize the crime problems on their beats. As importantly, they are jointly assigning and accepting responsibility for solving many of these problems. This unprecedented level of dialogue and cooperation between police and community is now being expanded to all neighborhoods of Chicago.

The success of this new police partnership currently is being evaluated in a thorough and scientific manner by a consortium of four major Chicago area universities led by Northwestern University and including DePaul University, Loyola

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University of Chicago and the University of Illinois at Chicago. While the evaluators' final analysis has yet to be completed, preliminary evidence suggests that CAPS is beginning to usher in a new era in police-community relations in Chicago. For example:

- On the south side of the City, in the Englewood community, it is common for 100 or more residents to attend the monthly meetings of the district's citizens advisory committee. In addition, a newly formed pastor's community is bringing more than 200 religious institutions into the CAPS partnership in this impoverished, historically high-crime area.

- On the west side of the City, in the Austin neighborhood, several community organizations, with the assistance of district police personnel, recently joined to prepare a successful grant application that will pay for a van which the organizations will use to organize and mobilize the community around CAPS.

- On the north side of the City, in Rogers Park, police and citizens recently participated for an entire weekend of joint training around community policing at a local park facility.

Even these examples do not capture adequately the spirit of change. There are dozens of smaller cooperative efforts between police and the community that are taking place daily throughout the City as a result of the CAPS partnership -- police helping the community and the community helping the police.

With CAPS, the police-community partnership goes beyond the grass roots level. At the larger district level, residents are actively involved in the district advisory committees that have been involved in each of our 25 police districts. These committees provide direct input to the district commander on issues of importance to the community. At the citywide level, citizens have participated as instructors in our CAPS training efforts and several community members sit on the Department's strategic planning group, a small committee that is planning the internal organizational changes that will support our new policing strategy.

This level of community involvement in Department operations at all levels is something that I promised last October when I published Together We Can, the Department strategic plan for organizational change. As CAPS continues to

expand throughout the City, meaningful involvement from all segments of the community will remain a foundation of all policing strategies in Chicago. Evaluating "Police-Community Relations in Chicago" without addressing CAPS in any significant way, presents an inaccurate picture of the current state of affairs in Chicago.

The 1990's are a time of challenge and change, not just for the Chicago Police Department but also for the communities we serve. While crime in Chicago remains serious and often deadly, the fight against crime is one of our common bonds. Through the Chicago Alternative Policing Strategy and other innovative community-based programs, the Chicago Police Department is taking a leadership role in trying to foster a spirit of trust and unity. We are shifting from a purely reactive approach to policing to one which emphasizes co-active strategies carried out in partnership with the community. These significant changes in philosophy and policy will help ensure higher quality police protection for every citizen of Chicago in the future.

I thank you for the opportunity to respond to the draft report, and I respectfully request that the Commission include a copy of this letter in its final report.

Sincerely,

Matt L. Rodriguez
Superintendent of Police

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